

No. 1821

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# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

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THE UNITED STEAMSHIP COMPANY (a Corporation), Claimant of the American Steamer "SANTA RITA," Her Tackle, Apparel and Furniture, and All Persons Intervening for Their Interests Therein,  
Appellants,

vs.

THOMAS HASKINS and MAX SCHWABACHER,  
Partners Doing Business Under the Firm Name of  
LEEGE & HASKINS, Libelants,  
Appellees.

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## APOSTLES.

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Upon Appeal from the United States District Court for  
the Northern District of California.

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FILED  
FEB 24 1910



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Stipulation Under Admiralty Rule 4.]

*In the District Court of the United States for the  
Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

American Steamer "SANTA RITA," Her Tackle,  
Apparel and Furniture, and All Persons In-  
tervening for Their Interests Therein,  
Respondents.

UNITED STEAMSHIP COMPANY (a Corpora-  
tion),  
Claimant.

It is hereby stipulated by and between the respec-  
tive parties hereto, under Admiralty Rule 4 of the  
United States Circuit Court of Appeals, for the  
Ninth Circuit, that the Apostles herein may omit  
therefrom all of the record, testimony, papers and  
proceedings filed, taken or had herein, except the  
following, which shall be set forth in said Apostles.

1. A caption exhibiting the proper style of the  
Court, and title of the cause; and a statement show-  
ing the time of the commencement of the suit, the  
names of the parties thereto, including claimant, the  
respective dates when the pleadings herein were filed,  
the time when the trial hereof was had, the name of  
the Judge hearing the same, the result of said trial,

date of entry of Interlocutory Decree, reference of question of damages to the Commissioner, result of the proceedings taken before such Commissioner and of his Report thereon, exceptions thereto, and date of the entry of the Final Decree, as well as date when the Notice of Appeal therefrom was filed.

2. The Libel herein, Amendment thereto, and Answer to Libel as Amended.

3. All of the Testimony and other proofs adduced herein before the Commissioner.

4. The Interlocutory Decree, Report of Commissioner, Exceptions thereto, and Final Decree in the cause.

5. The Notice of Appeal, Citation on Appeal, and Assignments of Error.

It is further stipulated and agreed that the appeal herein is taken pursuant to section 3 of Admiralty rule 4 of the Circuit Court of Appeals. If said Rule be held unconstitutional, or invalid for any other reason, then this Appeal shall be dismissed. If said rule be held or deemed to be constitutional, then the sole question to be reviewed by the Circuit Court of Appeals on said appeal shall relate to the value of the damaged coffee involved herein at the time of its delivery to libelants.

Dated, San Francisco, California, December 22, 1909.

PAGE, McCUTCHEN & KNIGHT,  
Attorneys and Proctors for Appellant.

WILLIAM DENMAN,  
Attorney and Proctor for Appellee.

*vs. Thomas H. Haskins and Max Schwabacher.* 3

[Endorsed]: Filed Dec. 23, 1909. Jas. P. Brown,  
Clerk. By M. T. Scott, Deputy Clerk.

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*In the District Court of the United States in and for  
the Northern District of California.*

No. 13,639.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners Doing Business Under  
the Firm Name of LEEGE and HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," Her  
Tackle, Apparel and Furniture, and All Per-  
sons Intervening for Their Interests Therein,  
Respondents.

**Statement of the Clerk of the District Court.**

**PARTIES.**

Libelants: Thomas H. Haskins and Max Schwa-  
bacher, partners doing business under the firm  
name of Leege and Haskins.

Respondent: The American Steamer "Santa Rita,"  
her tackle, etc.

Claimants: The United Steamship Company, a cor-  
poration.

**PROCTORS.**

Libelants: Mr. WILLIAM DENMAN.

Respondents and Claimants: Messrs. PAGE, Mc-  
CUTCHEN and KNIGHT.

1907.

March 12. Filed Verified Libel.

Filed Libelants' Stipulation for Costs.

Issued Monition for Attachment of the

American Steamer "Santa Rita," etc., and which said Motion was afterwards returned and filed on the 13th day of March, with the return of the United States Marshal endorsed thereon.

13. Filed Claim of The United Steamship Company.

Filed Claimant's Stipulation for Costs.

Filed Admiralty Stipulation for the release of American Steamer "Santa Rita," etc., in the sum of \$12,000.00, with the United States Fidelity and Guaranty Company, as Surety.

- April 26. Filed Answer of the United Steamship Company.

May 2. Filed Amendments to Libel.

- Sept. 30. The above-entitled cause came on for hearing on this day, in the District Court of the United States of America, for the Northern District of California, at the City and County of San Francisco, before the Honorable John J. De Haven, Judge of said Court. And which said cause was, after the several hearings, submitted to the Court for consideration and decision on the 14th day of October, A. D. 1907.

1908.

- Jan. 24. Filed Memorandum Opinion, Order libelant recover damages sustained.  
Further ordered cause referred to United States Commissioner Jas. P. Brown, to ascertain and report amount of damages sustained by libelant, but which said Order was set aside and cause referred to United States Commissioner Francis Krull, to ascertain, etc., on November 9th, 1908.
- March 3. Filed Decree, determining liability for injury to cargo.
- Nov. 9. Filed order setting aside Reference to Commissioner Jas. P. Brown, and referring cause to Commissioner Francis Krull.

1909.

- June 3. Filed Report of United States Commissioner Francis J. Krull; amount of damage sustained by libelant, reported to be \$7,963.54, interest on said sum at 6%, \$1,112.24; total amount due libelant, \$9,075.78.  
Filed libelants' Exceptions to Report of Commissioner.
12. Filed claimants' Exceptions to Report of Commissioner.
- Aug. 6. Filed Memorandum Opinion, overruling all Exceptions to Commissioner's Re-

port, and ordered said Report confirmed.

16. Filed Final Decree.

Sept. 28. Filed Notice of Appeal.

1910.

Jany. 27. Filed Assignment of Errors.

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*In the District Court of the United States, Northern  
District of California.*

IN ADMIRALTY.

THOMAS H. HASKINS and MAX SCHWABACHER, Partners Doing Business Under the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," her Tackle, Apparel and Furniture, and All Persons Intervening for Their Interest Therein,  
Respondent.

**Libel in Rem for Damage to Cargo.**

To the Honorable J. J. DE HAVEN, Judge of the United States District Court, Northern District of California, in Admiralty:

The libel of Thomas H. Haskins and Max Schwabacher, of the City and County of San Francisco, partners doing business under the firm name of Leege & Haskins, against the American steamer "Santa Rita," whereof Arthur B. Conner was and is Master, her tackle, apparel and furniture, and all persons

intervening for their interest therein in a cause of contract civil and maritime, alleges as follows:

I.

That libelants are informed and believe and upon said information and belief allege that some time in the month of October, A. D. 1906, Arbuckle Bros. shipped on board the said steamer, then lying at the port of New York, State of New York, to be carried and transported in said steamer to the Port of San Francisco, State of California, and delivered to the libelants at said port, ten hundred sixty-seven (1,067) bags of Santos coffee, weighing one hundred fifty-two thousand seven hundred sixty-four (152,764) pounds, the said coffee then being in good order and well conditioned to be delivered to libelants in like good order; and the said Arthur B. Conner, as said captain, received the said coffee aboard said ship and agreed to carry the same in said manner and condition and as a common carrier thereof to said port of San Francisco; that said steamer "Santa Rita" was owned by the United Steamship Company, a New Jersey corporation, and was chartered for said voyage by the Union Oil Company, a California corporation; that said Arthur B. Conner was the agent of both said corporations and of said ship in receiving said coffee; that said ship was on said voyage carrying goods as a common carrier by sea.

II.

That the said steamer "Santa Rita" did steam on the said voyage and did thereafter arrive at the port of San Francisco, and did there deliver to the libel-

ants the said coffee, but, as libelants are informed and believe and upon said confirmation and belief allege, not in the like good order as when delivered to the said ship, but, on the contrary, the said coffee when delivered to the libelants at the said port of San Francisco was badly damaged by contact with oil and water, which damage was inflicted upon the said cargo while in the possession of the said ship on the said voyage.

### III.

That the injury to the said cargo so received on the said voyage is more than ten thousand (\$10,000) dollars, and that libelants have been damaged in said amount.

### IV.

That the said steamer "Santa Rita" is now within the port of San Francisco, Northern District of California.

### V.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Court.

Wherefore, the libelants pray that process in due form of law according to the course of this Court in causes of Admiralty and maritime jurisdiction may issue against the said steamer, her tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree the payment of the damages aforesaid with costs, and that the said vessel may be condemned and sold to pay the



same, and that the libelants may have such other and further relief in the premises as in law justice they may be entitled to.

WILLIAM DENMAN,  
Attorney for Libelants.

State of California,  
City and County of San Francisco,—ss.

Thos. H. Haskins, being first duly sworn, deposes and says: That he is one of the libelants herein, and as such is authorized to verify this libel; that he has read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to such matters he believes it to be true.

THOS. H. HASKINS.

Subscribed and sworn to before me this 12th day of March, 1907.

[Seal] JOHN FOUGA,  
Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Mar. 12, 1907. Jas. P. Brown, Clerk. By John Fougua, Deputy Clerk.

*In the District Court of United States, Northern  
District of California.*

IN ADMIRALTY.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," Her  
Tackle, Apparel and Furniture, and all Per-  
sons Intervening for Their Interest Therein,  
Respondent.

**Amendments to Libel.**

To the Honorable JOHN J. DE HAVEN, Judge of  
the District Court of the United States, for the  
Northern District of California:

Now come the libelants herein, and finding new  
facts set up in the answer of the United Steamship  
Company, claimant of the above-named steamer  
"Santa Rita," pursuant to Rule 51 of the Admiralty  
Rules of the Supreme Court of the United States,  
they file their amendment to the libel by them herein  
filed, adding thereunto and alleging as follows:

I.

That it is true that the coffee injured while carried  
by the said steamer "Santa Rita" as heretofore de-  
scribed in this libel was carried under Bill of Lading  
issued by and on account of said steamship, and that  
the copy of the Bill of Lading set forth in the answer

of claimant is a full, true and correct copy of said Bill of Lading, that long prior to the delivery of the said cargo in San Francisco, and prior to the receipt of the said injury by said cargo, Arbuckle Brothers, the person to whom the said Bill of Lading was issued and the consignee therein named, assigned, endorsed and set over the said Bill of Lading of libelants, and that libelants have ever since been, and now are, the owners and holders of the said Bill of Lading, and at the time of the receipt of the injuries by the said coffee were the owners of the said coffee.

WILLIAM DENMAN,  
Proctor for Libellants.

State of California,  
City and County of San Francisco,—ss.

Thomas H. Haskins, being duly sworn, deposes and says: That he is one of the libelants herein; that he has read the foregoing amendment and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to such matters he believes it to be true.

THOMAS H. HASKINS.

Subscribed and sworn to before me this 2d day of May, 1907.

[Seal]

CEDA DE ZALDO,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed May 2, 1907. Jas. P. Brown, Clerk. By John Fouga, Deputy Clerk.

*In the District Court of the United States of America,  
Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWABACHER, Doing Business Under the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," Her Tackle, Apparel and Furniture, etc.

**Claim.**

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California.

The claim of United Steamship Company, corporation, to the American Steamer "Santa Rita," her tackle, apparel and furniture, now in the custody of the Marshal of the United States for the said Northern District of California, at the suit of Thomas H. Haskins and Max Schwabacher, partners doing business under the firm name of Leege & Haskins, alleges:

That United Steamship Company, a corporation, is the true and bona fide owner of the said American Steamer "Santa Rita," her tackle, apparel and furniture, and that no other person is owner thereof.

Wherefore, this claimant prays that this Honorable Court will be pleased to decree a restitution of

*vs. Thomas H. Haskins and Max Schwabacher.* 13

the same to it and otherwise right and justice to administer in the premises.

UNITED STEAMSHIP CO.,

By JAMES JEROME,

Secy.

————— deposes and says that he was and is the Master of said vessel, and that at the time of the said arrest thereof he was in possession of the same as the lawful bailee thereof for the said owner —; that said owner — reside — out of the said Northern District of California, and more than one hundred miles from the city of San Francisco, in said District.

Northern District of California,—ss.

Subscribed and sworn to before me this 5th day of *thirteenth day of* March, A. D. 1907.

PAGE, McCUTCHEN & KNIGHT,

Proctors for Claimant.

JOHN FOUGA,

Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed March 13th, 1907. Jas. P. Brown, Clerk. By John Fouga, Deputy Clerk.

[Answer.]

*In the District Court of the United States, Northern  
District of California.*

IN ADMIRALTY.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," Her  
Tackle, Apparel and Furniture, and all Per-  
sons Intervening for Their Interest Therein,  
Respondent.

To the Honorable JOHN J. DE HAVEN, Judge of  
the District Court of the United States, for the  
Northern District of California.

The answer of United Steamship Company, claim-  
ant of the above-named steamer "Santa Rita," in-  
tervening for its interest in said vessel, to the libel  
herein of Thomas H. Haskins and Max Schwabacher,  
partners doing business under the firm name of Leege  
& Haskins, alleges as follows:

I.

That it is true that in the month of October, 1906,  
Arbuckle Brothers shipped on board said steamer,  
then lying at the port of New York, State of New  
York, to be carried and transported in said steamer  
to the port of San Francisco, State of California, to  
the order of said Arbuckle Brothers, and not other-

wise, and delivered to libellants at the port last named, ten hundred and sixty-seven (1,067) bags of green coffee, and not otherwise, weighing one hundred and thirty-eight thousand seven hundred and ten (138,710) pounds, and no more, but claimant is entirely ignorant as to the order and condition of said coffee, and each and every part thereof, at the time of said shipment, and therefore leaves libellants to their proof thereof.

## II.

Claimant denies that said coffee, under the term of the contract of shipment, was to be delivered to libellants in good order and well-condition; and denies that the master of said ship, to wit, Arthur B. Conner, agreed to carry said coffee in the manner set forth in said libel, or in any manner or under any other terms or conditions than those set forth in the bill of lading, under which said coffee was transported as aforesaid, which bill of lading is here referred to and a copy thereof is hereunto attached and made a part hereof; and claimant avers that the said Arthur B. Conner received said merchandise on board of said steamer as master thereof, and as agent for either claimant or the Union Oil Company, a California corporation, as the interest of each may appear under a charter-party theretofore entered into between them and then in effect, and not otherwise.

## III.

Claimant alleges that the coffee referred to in said libel, after being received on board of said steamer, was carried thereby from the said port of New York

to the said port of San Francisco under the contract of carriage hereinbefore set forth, and not otherwise, and that claimant is the sole owner of said vessel.

## IV.

Claimant alleges that upon the arrival of said steamer at said port of San Francisco, said coffee was delivered to libellants, but claimant has no information or belief upon the subject sufficient to enable it to answer the allegations of the libel respecting the condition of said coffee at the time of its delivery as aforesaid, and therefore placing its denial on that ground it denies that at such time said coffee was badly or at all damaged by contact with oil and water, or either thereof.

On the other hand, claimant avers the fact to be that said coffee, if damaged at all, was damaged by a cause specified in said bill of lading as exempting said carrier from liability, to wit, from leakage, breakage, contact with other goods, and perils of the sea.

## V.

Claimant has no information or belief upon the subject next hereinafter mentioned sufficient to enable it to answer the allegations of the libel in said behalf, and therefore placing its denial upon that ground it denies that the injury to the cargo hereinbefore referred to on said voyage is more than ten thousand (10,000) dollars, or is said sum or any part thereof, and denies that the libellants have been damaged in said amount or any part thereof.



*vs. Thomas H. Haskins and Max Schwabacher.* 17

Wherefore, claimant prays that the libel may be dismissed, with its costs in this behalf sustained.

PAGE, McCUTCHEN & KNIGHT,

Proctors for Claimant.

State of California,

City and County of San Francisco,—ss.

James Jerome, being duly sworn, deposes and says: That he is an officer, to wit, the treasurer, of the United Steamship Company, the claimant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

JAMES JEROME.

Subscribed and sworn to before me this 26th day of April, 1907.

[Seal]

ROBT. J. TYSON,

Notary Public in and for the City and County of San Francisco, State of California.

**[Exhibit to the Answer—Bill of Lading.]**

SHIPPED in good order and condition by ARBUCKLE BROS. in and upon the Steamship called Santa Rita whereof is Master for this present voyage A. B. Conner or whoever else may go as Master in the said vessel, and now lying in the port of NEW YORK, and bound for San Francisco, Cal. One thousand & sixty-seven (1067) bags Green Coffee, S. Covers being marked and numbered as in the margin; and are to be delivered from the ship's deck,

where the ship's responsibility shall cease, in like good order and condition, at the aforesaid port of San Francisco (the act of God, the Kings enemies, Pirates, Robbers, Thieves, Vermin; Barratry of Master or Mariners, Restraints of Prince and Rulers, Loss or Damage arising from insufficiency in strength of Packers, from Sweating, Leakage, Breakage, or from Stowage or contact with other goods, or from any of the following perils, whether arising from negligence, default, or error in judgment of the Master, Mariners, Engineers or other of the crew, or otherwise howsoever excepted), Namely: Risk of Craft, Explosion or Fire at Sea, in Craft or on Shore, Boilers, Steam or Machinery, or from the consequence of any damage or injury thereto howsoever such damage or injury may be caused, Collison, Stranding, or other perils of the Seas, Rivers, or Navigation, of whatever nature or kind soever; and howsoever such Collision, Stranding or other perils may be caused, with liberty, in the event of the steamer coming back to New York, or into any other port, or otherwise being prevented, from any cause, from proceeding in the ordinary course of her voyage, to tranship the Goods by any other Steamer and with liberty during the voyage to call at any port or ports, to receive Fuel, to load or discharge Cargo, or for any other purpose whatever, to sail with or without pilots, and to tow and assist vessels in all situations, unto San Francisco, Cal. or to owners or their Assigns, Freight for the said goods being paid, immediately on landing, without any allowance of credit or discount, at the rate of forty (40) cents per

hundred gross weight delivered with 5 per cent primage on average accustomed. IN WITNESS WHEREOF, the Master or Agents of the said Ship hath affirmed to one Bills of Lading, besides Captain's copy, all of this tenor and date, one which Bills being accomplished, the others to stand void.

Weights, Measures, Contents, Quality, Brand and Value unknown. The Goods to be taken from alongside by the consignee, immediately the vessel is ready to discharge, or otherwise they may be landed and warehoused at his risk and expense. The Collector of the Port is hereby authorized to grant a general order for discharge, immediately after the entry of the ship. The master Porterage of the delivery of the cargo to be done by the Consignee of the Ship, and the expenses thereof to be paid by the receivers of cargo. The owner of the ship will not be responsible for Money, Documents, Gold, Silver, Bullion, Specie, Jewelry, Precious Stones or Metals, Paintings and Statuary, unless Bills of Lading are signed therefor and the value thereof therein expressed.

In accepting this Bill of Lading, the Shipper or other Agent of the Owner of the Property carried, expressly accepts and agrees to all its stipulations, exceptions and conditions, whether written or printed. Sterling freight at the quoted short exchange on London, and Dollar freight Fres. 5f. 25c. in Gold, to the Dollar. Dated in New York, Oct. 20, 1906.

FILLMORE CONDIT.

Agent.

Not Accountable for Weights, Marks, Decay, Breakage, or Damage by Rats.

Attention of Shippers is called to the Act of Congress of 1851.

“Any person or persons shipping Oil or vitriol, Unslacked Lime, Inflammable Matches, or Gunpowder in a Ship or Vessel taking cargo for divers persons on freight without delivering it at the time of shipment a note in writing expressing the nature and character of such merchandise to the Master, Mate, or officer or other person in charge of loading of the Ship or Vessel, shall forfeit to the UNITED STATES, ONE THOUSAND DOLLARS.

To the order of Arbuckle Bros.

Notify Leege & Haskins,

San Francisco, Cal.

|                                |          |
|--------------------------------|----------|
| Freight 138,710 at 40c £ ..... | \$554.84 |
|--------------------------------|----------|

|               |      |
|---------------|------|
| Primage ..... | 3.45 |
|---------------|------|

|                |          |
|----------------|----------|
| Total, £ ..... | \$558.29 |
|----------------|----------|

IT IS ALSO MUTUALLY AGREED, that this shipment is subject to all terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled “An act Relating to the Navigation of vessels, etc.”

Admission of service of the within Answer and receipt of a copy is hereby admitted this 26th day of April, 1907.

WILLIAM DENMAN,

Proctor for Libelant.

[Endorsed]: Filed Apr. 26, 1907. Jas. P. Brown, Clerk. By John Fouga, Deputy Clerk.

[Findings of Fact and Conclusion of Law, etc.]

*In the District Court of the United States, Northern  
District of California.*

No. 13,639.

THOMAS H. HASKINS et al.,

Libelants,

vs.

The American Steamer "SANTA RITA" et al.,

Respondent.

Upon consideration of the evidence I find all of the allegations of the libel and the amendment thereto, to be true;

Second, that the damage to the cargo of coffee mentioned in the libel was not caused by leakage, breakage, contact with other goods, or perils of the sea, or any other cause specified in the bill of lading, as exempting the steamer "Santa Rita" from liability.

As a conclusion of law from the foregoing facts, I find that the libelants are entitled to a decree for the damages sustained by them on account of the matter alleged in their libel, and for costs.

The case will be referred to United States Commissioner Brown, to ascertain and report the amount of such damages.

Let such a Decree be entered.

Dated, January 24, 1908.

JOHN J. DE HAVEN,  
Judge.

[Endorsed]: Filed January 24, 1908. Jas. P. Brown, Clerk. By J. S. Manley, Deputy Clerk.

*In the District Court of the United States, Northern  
District of California.*

IN ADMIRALTY.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

American Steamer "SANTA RITA," Her Tackle,  
Apparel and Furniture, and All Persons In-  
tervening for Their Interests Therein,  
Respondent.

**Decree Determining Liability for Injury to Cargo.**

The libel herein coming on duly to be heard, the libelants being represented by their proctor, William Denman, Esq., and the claimant, United Steamship Company, by its proctor, Charles Page, Esq., and Samuel Knight, Esq., and it being admitted at the hearing that the allegations of the libel as to the ownership of the cargo, its receipt by the vessel in good condition and its delivery in a somewhat damaged condition were true; and it being agreed that the question of the amount of the said damage, in the event that the steamer "Santa Rita" be held liable for the damage, should be referred to a commissioner, and evidence being introduced as to the liability of the vessel for the said damage; and the Court finding that the said damage was not caused by leakage, breakage, contact with other goods and perils of the sea, or any of them, as alleged in the answer, or at all;

*vs. Thomas H. Haskins and Max Schwabacher.* 23

Now, therefore, it is ordered, adjudged and decreed that the said American steamer "Santa Rita" and her claimant, the United Steamship Company, and the stipulators to the stipulation of claimant on file herein, be and are held liable to libelants for the damage received by the cargo of the said vessel on the voyage from New York to San Francisco as in the said libel described; and it is further ordered that the said cause be referred to James P. Brown, Esq., Commissioner of this Court, to hear testimony and assess the said damage; and it is further ordered that the libelants herein shall have their costs and interest on the amount of damage to said cargo from the time of the receipt of the said injury.

Dated March 3d, 1908.

JOHN J. DE HAVEN,  
Judge.

[Endorsed]: Filed Mch. 3, 1908. Jas. P. Brown,  
Clerk. By Francis Krull, Deputy Clerk.

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*In the District Court of the United States, Northern  
District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," etc., and  
All Persons Claiming any Interest Therein,  
Respondents.

**Order Substituting U. S. Commissioner.**

It appearing that United States Commissioner James P. Brown, heretofore appointed Commissioner for the determination of the damages claimed to be suffered herein, will be absent from this District for an extended period,—

It is therefore ordered, that the appointment of said Commissioner be hereby set aside, and that Francis Krull be appointed as said Commissioner with the same powers herein as conferred upon the said United States Commissioner James P. Brown.

Nov. 9, 1908.

JOHN J. DE HAVEN.

[Endorsed]: Filed Nov. 9, 1908. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

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*In the District Court of the United States, Northern  
District of California.*

No. 13,639.

THOMAS H. HASKINS and MAX SCHWABACHER, Partners, Doing Business Under the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The Steamer "SANTA RITA," etc.,  
Respondent.

**Report of United States Commissioner.**

To the District Court of the United States for the Northern District of California.

Pursuant to the order of reference made in the above-entitled case, referring the same to the under-



signed as United States Commissioner, to ascertain and report the amount of the damage to which libellant is entitled, I have to report as follows: I was attended on the dates upon which the testimony was taken by William Denman, Esq., and Samuel Knight, Esq., of the firm of Messrs. Page, McCutchen & Knight, proctors for respondent, and the proceedings and testimony had and taken are hereunto annexed and made a part hereof.

The consignment of coffee upon which the damage is to be assessed herein, for which the steamer "Santa Rita" has been found to be liable, arrived at the port of San Francisco some time during the month of January, 1907, and was taken from the dock of the steamer's discharge on January 30, 1907, and within six or seven days thereafter, through the agency of a broker, sold as damaged coffee to a coffee jobber in San Francisco for  $5\frac{1}{4}$  cents per pound, and within a week thereafter again sold by the purchaser to a coffee buyer in St. Louis for  $6\frac{3}{4}$  cents per pound. A considerable expense was had in conditioning the coffee and preparing it for shipment.

Other coffee, a part of the same general cargo of the steamer, consigned to a coffee firm in San Francisco, and damaged from the same cause, was sold in San Francisco in the month of September, 1907, for six cents per pound.

It is contended by the respondent that the price of  $5\frac{1}{4}$  cents per pound obtained for the damaged coffee, was inadequate; that a better price could and should have been obtained.

The market value of coffee damaged as this was is more or less speculative, and I am not satisfied from the evidence before me that reasonable exertions were not made to obtain the best price for this damaged coffee, and, in view of the testimony of the experts, I am not satisfied that the price for which it was sold, was not as good as could have been obtained. The broker who handled the coffee is one of standing and experience, and I find no reason to question the good faith of the transaction.

The price of  $5\frac{1}{4}$  cents per pound is therefore taken as the basis in ascertaining the market value of this damaged coffee.

I find from the evidence that this coffee was what is known to the coffee trade as "Santos Coffee."

That the market value of "Santos" coffee in sound condition in the market of San Francisco, at the date of the arrival of the "Santa Rita" was  $10\frac{1}{2}$  cents per pound.

That the number of pounds of this coffee shipped in good order was 152,764 lbs., consisting of 1,067 bags.

That the total weight of said coffee delivered on account of this consignment was practically the same as the weight shipped.

As a conclusion from the foregoing findings of fact, I find the market value of this coffee in sound condition to be, (152,764 lbs., at  $10\frac{1}{2}$  cents per lb.) . . . . . \$16,040.22

The value of the damaged coffee, I find to be (152,764 lbs. at  $5\frac{1}{4}$  cents per lb.) . . . . . 8,020.11

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\$8,020.11

It is admitted that there was unpaid freight amounting to ..... 56.57

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\$7,963.54

It appears from the evidence that coffee is sold in the market of San Francisco on a basis of 2% discount for cash, and that this coffee was sold on these terms.

As interest is allowed from the date of the injury to this coffee, no deduction is made for discount from the value of the damaged coffee.

From the foregoing findings of fact and conclusions therefrom I find, and do so report, the amount of the damage to which libelant is entitled to be \$7,963.54.

The decree herein allows interest on the amount of damage from the time of the receipt of the injury.

I find and fix the time of the injury as January 30, 1907, the date of the delivery of said coffee, and the interest is found to be \$1,112.24, which is six per cent on \$7,963.54, from January 30, 1907, to and including the date of this report.

To recapitulate: The damage is ascertained and reported to be ..... \$7,963.54

The interest on this sum at 6% is found to be ..... 1,112.24

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Total, ..... \$9,075.78

All of which is respectfully submitted.

Dated, San Francisco, Cal., May 28, 1909.

FRANCIS KRULL, [Seal]

United States Commissioner, Northern District of California.

**[Testimony Taken Before the United States Commissioner.]**

*In the District Court of the United States in and for the Northern District of California.*

IN ADMIRALTY—No.13,639.

THOMAS H. HASKINS and MAX SCHWABACHER, Partners, Doing Business Under the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," etc.,  
Respondents.

**[Proceedings Had Before the United States Commissioner.]**

PROCEEDINGS UNDER ORDER OF REFERENCE OF NOVEMBER 9, 1908, OF THE ABOVE-NAMED COURT TO FRANK KRULL, UNITED STATES COMMISSIONER FOR THE NORTHERN DISTRICT OF CALIFORNIA, TO TAKE TESTIMONY AND REPORT DAMAGES SUSTAINED BY THE LIBELANT, IF ANY.

On this, the 9th day of December, 1908, at 3 P. M. of said day, at the office of said Commissioner, appeared William Denman, Esq., proctor for libellants, and W. S. Burnett, Esq., representing Messrs. Page, McCutchen & Knight, proctor for respondents; whereupon the following proceedings were had:

[**Testimony of E. H. O'Brien, for the Libelants.**]

E. H. O'BRIEN, called for the libelants, sworn.

Mr. DENMAN.—Q. Mr. O'Brien, what is your full name?       A. Edward H.

Q. What is your occupation?

A. Coffee broker.

Q. How long have you been in that business?

A. Well, I have been in the coffee brokerage business about eight years. I have been engaged in the coffee business for seventeen years.

Q. And how long have you been engaged in San Francisco?

A. For the entire seventeen years.

Q. Do you recollect in the spring of 1907 handling some coffee out of the "Santa Rita"?

A. I do.

Q. Do you recollect a particular lot—pardon the interruption. It was in the fall of 1906.

Q. And do you recollect receiving in San Francisco certain coffee from the steamship "Santa Rita" in the month of February, 1906, in a damaged condition?       A. 1907; I do.

Q. What was done with that coffee? I am not referring to the Leege & Haskins shipment.

A. Immediately after its arrival, or after the vessel had begun discharging, I went to the dock at the request of some insurance company: I believe it was the New Zealand Insurance Company, the agents of this company were Parrot & Co. They were clients of our office as coffee importers. I went to the dock

(Testimony of E. H. O'Brien.)

and found that the coffee, or some of it, was badly damaged, the bags being swollen and badly oil stained, and smelled of a sort of crude creosote oil. I had preliminary samples which I took at the dock and which I brought to the office, and made sample roasts, and after the roasts had been made I made my usual cup tests and verified my judgment on the dock that the coffee was damaged, and badly damaged.

Q. Now, what was the nature of that damage?

A. It was an oil damage, and smelled of creosote and tasted with a flavor entirely foreign to a coffee flavor. In fact, there was not hardly the slightest semblance of coffee flavor in a drink after these roasts had been made.

Q. What was done with that coffee?

Mr. BURNETT.—Q. Of your own knowledge?

A. We were requested by the insurance company to sample and dispose of the coffee to the best advantage possible, and at the best possible price; and I advised that the best disposition we could make of that coffee, as soon as possible, would be the best course to pursue.

Mr. BURNETT.—I move to strike out that answer as not responsive to the question, and as being statements passing between other parties, which statements do not in any way bind us and cannot in any way bind the ship.

Mr. DENMAN.—Go right on.

A. I advised that it would be to the best interests of whoever it might concern to have the coffee taken

(Testimony of E. H. O'Brien.)

to a warehouse, dumped, aired and resacked, so that its original damage would not be visibly apparent, which was done; and then we sent samples to various sections of the United States where we have representatives—to New York, Chicago, Cincinnati, St. Louis, Kansas City, etc.; and to the best of my knowledge, drew only one bid. We made local efforts and sold it to a local buyer.

Q. Now, what did you sell it for?

A. I can't answer without consulting the books, as I don't know.

Q. Have you got the books with you?

A. No, I have not our salesbooks. I believe that Mr. Oliver can probably enlighten us on that subject as he knows that the coffee was sold to Mr. Lewin.

Mr. OLIVER.—It was sold on the 6th of February at  $5\frac{1}{4}$  cents, first.

Mr. DENMAN.—Q. Do you remember sending me a sample of this coffee?

A. No, I don't recollect sending you a sample; but to the best of my knowledge that sample which you show me in the paper bag is the coffee.

Mr. DENMAN.—I now offer in evidence this sample of coffee just shown the witness.

Mr. BURNETT.—We object to the so-called sample on the ground that it has not been sufficiently identified.

(Marked "Libelant's Exhibit No. 1.")

Q. This bag, Mr. O'Brien, marked "Libelant's Exhibit No. 1," can you tell whether or not that

(Testimony of E. H. O'Brien.)

coffee is the same or similar to the coffee that you sold as testified to?

A. I could testify for a positive fact that the sample which you now show me, the sample in the glass, is the coffee that we sold, because I have never tasted or smelled any other coffee in my seventeen years' experience like it.

Q. And this coffee in the glass is the same coffee that you show?                      A. Yes, sir.

Q. And was it infected in the same way at the time you sold it?                      A. Yes, sir.

Q. Now, sample the coffee. Do you detect an odor in it?

A. I have sampled it and have detected the damaged odor.

Q. It now has a damaged odor?

A. It now has a damaged odor.

Q. Was it in that condition at the time that you sold it?                      A. It was.

Q. Will you kindly test this coffee in the bag? First, I will offer the sample in the glass in evidence and ask to have it marked "Libelant's Exhibit No. 2." (So marked.)

A. The odor has gone off of this bag sample to a very perceptible degree, but it is still damaged coffee. It still smells of what we have termed with regard to that coffee as a creosote smell.

Q. Have you tasted the berry from that bag?

A. No, you can't tell with any degree of satisfaction by tasting a green berry, as to what the coffee would drink like or taste like when roasted for manu-



(Testimony of E. H. O'Brien.)

facturing purposes. I could take a portion of this sample and would be willing to make a test of it and then testify as to its condition.

Q. Well, now, will you test one of those berries and see if you can detect the taste of oil or creosote?

A. Yes, markedly.

Q. What can you say of this coffee in this paper bag here, marked "Libelant's Exhibit No. 1," as to how it compares with the coffee you sold in February of last year, in regard to the amount of oil of creosote?

A. I would say that the sample in this bag smells nothing like as strong now as was the coffee that was sold; but would qualify that answer by saying that the first bean chewed from the bag gave very visible evidence, very forcible evidence, that the coffee is the creosote damaged coffee.

Q. Was the price at which you sold that coffee a reasonable price for that coffee in the condition it then was?

A. We thought it not alone a reasonable price, but an exceedingly attractive price; and I want to say that were it the owner's coffee or the purchaser's coffee or the insurance company's coffee or anyone else's coffee it would have met the same treatment and the same conscientious advice that was given to the insurance company. We had the best interests of whoever was concerned, at heart, in the handling of that coffee.

Q. You say you made several tenders of the coffee before it was finally sold?

(Testimony of E. H. O'Brien.)

A. I made several tenders of the coffee before it was finally sold for account of the insurance company, and made several tenders of it afterwards for Lewin's account.

Q. Were you able to sell it for Lewin's account?

A. We did sell it for Lewin's account.

Q. When was it sold for Lewin's account?

A. On account of another receiver of coffee by that same steamer who also had coffee that was badly damaged, and who threatened to have the coffee condemned by the pure food authorities, we advised Lewin to ship the coffee out of the state, load it into cars and ship it out of the state without any destination in view, as we knew the coffee was unfit for use, several local manufacturers stating that it was absolutely of no value except as fuel. And we loaded it into cars, four or five carloads, and sent it over to the Southern Pacific tracks with instructions that the destination would be ultimately given.

Q. Who were the manufacturers that gave this opinion of the coffee here?

A. Folger, Schilling, Hills and several others.

Mr. BURNETT.—I move to strike out the opinions of the manufacturers on the ground that it is pure hearsay.

Mr. DENMAN.—Q. Did you offer this coffee to these various parties. A. I did.

Q. And they refused to buy it?

A. They refused to have anything to do with it.

Q. At any price? A. At any price.

(Testimony of E. H. O'Brien.)

Q. How many pounds of that coffee were sold? Do you know?

A. I can't answer except approximately. I should think that those bags weighed about 130 pounds apiece. That variety of coffee generally does.

Q. You have those weights in your books, have you not?      A. Yes, sir.

Q. Can you show those books to Mr. Burnett if he wants to examine them?      A. Yes, sir.

Q. What was the sound value of this coffee in San Francisco at the time you sold it in its damaged condition?

A. The sound value of that coffee at the time of its arrival in San Francisco would have been approximately eleven cents.

Q. Now, you say that you made various attempts to dispose of the damaged coffee, and ultimately it was shipped out of the state. Did you see that coffee afterwards in the warehouse?

A. Yes, I kept a man there for 4 or 5 days overseeing the coffee as it was taken from its original sacks, and the worst portion skimmed off, the coffee that was worst damaged skimmed off. I saw it every day and made probably in all fifty tests, cup tests of it.

Q. Do you know where that coffee is, now?

A. Yes, that very coffee is in existence now in a warehouse in St. Louis.

Q. Now, did you see it in this other warehouse that you speak of, in St. Louis? Did you see it there?

(Testimony of E. H. O'Brien.)

A. I was told by our broker there and by the man who bought it that he had no idea of how badly it was damaged, but he had found out after repeatedly trying to use it and sell it—after repeatedly trying to sell it to what he termed the nigger trade in the southeast.

Mr. BURNETT.—I move to strike out all that last answer as being irresponsible to the question and being pure hearsay, and ask counsel to caution the witness not to give us such wild assertions as that.

The WITNESS.—Well, I didn't go to the warehouse to see the coffee in St. Louis any more than I see one lot in one thousand lots of coffee received by me in San Francisco. But in substantiation of my contention that we had done our utmost to get the most attractive price for the coffee I will say that to my positive knowledge within the last five months the coffee is almost intact. It has never been used.

Cross-examination.

Mr. BURNETT.—Q. The whole lot?

A. Yes.

Q. How do you know where the coffee is at present? You say you know of your positive knowledge. Did you see it? A. No.

Q. Did you examine it? A. No.

Q. Did someone tell you it was?

A. Yes, sir.

Mr. BURNETT.—I move to strike out the answer of the witness to the effect that this coffee is now in existence.

(Testimony of E. H. O'Brien.)

The WITNESS.—I could only answer by saying that our representative whom we have never known to mislead or lie to us has advised us to that effect.

Q. Now, who first spoke to you about sampling this coffee, Mr. O'Brien?

A. The manager of the Marine Department of the Canton Insurance Co., I have since learned. I don't recollect his name. He was in the employ of Parrott & Co.

Q. Are you in the coffee business on your own account or in the employ of someone?

A. At the time of that sale I was—

Q. At the time of sampling the first lot?

A. At the time of the sampling I was associated with C. E. Bickford in business. Since that time through his death I have fallen heir to his business.

Q. Mr. C. E. Bickford was a local coffee man?

A. He was at the time. He was a coffee broker.

Q. Who pointed out to you the lot of coffee from which you took samples?

A. Who pointed it out?

Q. Yes?

A. I don't recollect the man's name. He seemed to be a sort of superintendent on the dock. I went down there in an automobile in company with the superintendent, or at least the manager of the Canton Insurance Co., and the coffee was spread out all over the dock. There were various samples taken from various bags and the bags that showed, in some instances, the least damage, outwardly, seemed to be the worst in the test.

(Testimony of E. H. O'Brien.)

Q. Was this one lot of coffee that you have described, or which has been described as the Leege & Haskins coffee on the dock at the time, or was there other coffee?      A. There was other coffee.

Q. Where were your samples taken from?

A. From the sacks on the dock.

Q. From throughout the entire dock you took samples, from the coffee as it laid on the dock?

A. Yes; I took a trier from many bags; drew them in the presence of the insurance man and in Mr. Haskins' presence, as he rode down to the dock with us, and then made the tests on the roasted samples, not on the green samples, as you could not determine with any degree of satisfaction how much damage there was, or what the damage was until the roasted tests were made.

Q. Just please confine yourself to the question.

A. Yes, sir.

Q. How do you know that the samples you took were from the Leege & Haskins coffee? Who told you?

A. All coffee is branded with some initials or marks. I made the sale originally from Arbuckle Bros. to Leege & Haskins and our contract read that the coffee was marked "J. N. J." That same mark was on the bags that were on the dock.

Q. Then you were satisfied in your mind that you got samples of the Leege & Haskins coffee only? Is that right?      A. Yes.

Q. Did you sample any other lots of coffee than the Leege & Haskins coffee?      A. I did.

(Testimony of E. H. O'Brien.)

Q. I mean coffee that was on the mail dock at that time?

A. It was not on the mail dock. I don't know what they do call that dock—the little mail dock.

Q. Anyhow, on the same dock on which the Leege & Haskins coffee was situated, you took samples of other coffee that had arrived out of the "Santa Rita"?

A. One other lot.

Q. One other lot?

A. Yes, that we were also interested in having sold.

Q. What other lot was that?

A. That was received by A. Schilling & Co.

Q. Did you keep the Schilling samples separate from the Leege & Haskins samples?

A. Yes, sir.

Q. Now, what was your method of sampling that coffee? How did you select the samples?

A. There is a regular steel trier, and you stab the bag with a punch of the bag, and the coffee runs out, runs through into the sample paper bag. I took along such samples as this. (Referring to Libellant's Exhibit No. 1.)

Q. Now, when you came to roast the coffee how did you do? Did you mix the samples you have described? Did you mix the samples of one paper bag with another, or did you maintain the integrity of each paper bag in making the roasted tests?

A. We made various roasts of the various samples drawn—I should say 20 different roasts, individual roasts—drawn from 20 different bags of the

(Testimony of E. H. O'Brien.)

coffee, and made our tests from those samples. We made 20 tests for the coffees from each bag—of the samples drawn.

Q. You didn't make any general sample by putting them all together?

A. Not on the first day that the samples were tested.

Q. Did you ever do it?      A. Oh, yes.

Q. Afterwards?      A. Afterwards.

Q. You made a general mixture, in other words, of all of the samples?

A. I made a general mixture of all of the samples.

Q. And then you roasted and made a test of that?

A. Yes, sir.

Q. Now, how many bags—you said you had about 20 bags, paper sacks?

A. Yes, sir; on the first day of the sampling.

Q. Well, what other sampling did you do?

A. After the coffee had been hauled to the warehouse and dumped into a pile of several hundred bags I went around and drew samples from several sides of the pile, so as to take an average, and as true a sample as possible.

Q. Now, was there any other coffee expert with you at the time you drew those samples, when you were on the mail dock, when the coffee was on the little mail dock?

A. No, I sampled all the coffee personally in only a preliminary way. The thorough sampling was done by a sampler who has been in the employ of our office for 12 years, and he does that work exclusively.



(Testimony of E. H. O'Brien.)

Q. My question was whether anyone else was with you on the first day's sampling—any other coffee sampling expert?      A. No one else.

Q. Was there anyone representing the steamer there, the "Santa Rita," at the time you drew those samples?

A. Yes, the superintendent of the dock, or he seemed to be the superintendent of the dock; a sort of an over-clerk who had charge.

Q. He was not an officer of the steamer, was he?

A. No, sir.

Q. He was the man in charge of the dock?

A. He was the man in charge of the dock.

Q. Under the Harbor Commission?

A. Whether he was under the Harbor Commission or not I don't know, but he seemed—he asked me by what right I was taking samples of the coffee.

Q. What did you tell him?

A. He was acquainted with the insurance man who was with me, and he told him that I was there in the interests of the insurance company, and that was all right for me to draw samples of the coffee.

Q. Was there anyone who claimed to represent the steamship company there at the time when you were taking samples on the dock, other than yourself and this superintendent?

A. To the best of my memory there was another party down there, and I believe his name is Kpoitz.

Q. Did he sample the coffee?      A. No.

Q. Is he a coffee man, if you know?

A. I don't know whether he did or not; whether

(Testimony of E. H. O'Brien.)

he was simply a clerk on the dock. He evidently had business on the dock, because he as well as others seemed interested in that sampling proceeding.

Q. You don't know whose interest he represented?      A. No.

Q. And then after the coffee was in the warehouse—it was then that you made a thorough sampling and test, or caused it to be made, wasn't it?

A. No, prior to its arrival in the warehouse I sent our sampler down to the dock to draw a large and true average sample of the coffee, and that was the sample brought to the office, on which our efforts to sell it were made.

Q. Did you do anything with the samples that you drew the day that you went down?

A. Yes, they were used principally for roasting and testing.

Q. And it was the sampling that was done subsequently that you made a general sample of?

A. It was the sampling that was done subsequently that I made a general sample of, and sold on.

Q. You don't know anything about that yourself, as to the taking of those samples on which that sale was made?

A. No, I didn't go down personally to draw the subsequent samples.

Q. (By Mr. DENMAN.) Is that man still with you?      A. Yes.

Q. What is his name?      A. Falkinham.

Q. What is his first name?

(Testimony of E. H. O'Brien.)

A. Joseph Falkinham.

Q. (By Mr. BURNETT.) And it was on those samples that the sale was made? A. Yes, sir.

Q. And it was on those samples, I suppose, that you have based your opinion as to the condition of the coffee?

A. On those, and on the samples that I drew personally, and on the opinion that I formed originally. My original opinion was formed on the samples that I drew myself.

Q. But you didn't consider those sufficient to enable you to draw a true conclusion as to the condition of the coffee, did you—the first samples?

A. No, because I couldn't take the time to sample individually some thousand bags of coffee. That would have required several hours work, and I don't believe my stay on the dock was more than ten or fifteen minutes.

Q. And that extensive sampling was necessary to enable you to determine how much the coffee was damaged? A. It was.

Mr. BURNETT.—We make the formal motion here to strike out the testimony of this witness as to the condition of the coffee, it appearing now that the tests that were made were made from coffee which has not been identified as that involved in this action.

#### Redirect Examination.

Mr. DENMAN.—Q. Mr. O'Brien, did the results of the large sampling confirm the opinion which you had gathered from your first personal sampling?

(Testimony of E. H. O'Brien.)

A. Yes, thoroughly so.

Q. When this coffee was subsequently offered to those wholesalers that you have spoken of, did they themselves sample the coffee?

A. Not to my knowledge, as they have always been satisfied with our samples—the truth of our samples.

Q. And you tendered them your samples?

A. Yes.

Recross-examination.

Mr. BURNETT.—Q. Do your books show the tests that you have described as having been made in your office?

A. No, we keep no record of tests made, for the reason that in a year's time there are several thousand lots of coffee handled, graded and sold by our office. We could not very well keep a record of all the tests. A test is made and the results are given to the prospective buyer, and we have no further use for it.

Q. Do you deal in damaged coffee?

A. We deal in any kind of coffee that is given to us whereby we can earn a percentage.

Q. Well, now, had you ever dealt in creosote—so-called damaged creosote coffee, before?

A. That is the first—no, it was not the first. We had had previous experience with damaged coffee, creosote damaged coffee, if you care to call it that.

Q. Well, now, let me ask you: in the samples that you took did you find any actual contact of the creosote with the coffee, or was it just the fumes?

(Testimony of E. H. O'Brien.)

A. Some bags were in actual contact with oil of some kind.

Q. What proportion, if you know, of the Leege & Haskins shipment showed actual contact?

A. I don't know, because I had no way of ascertaining from the bags. The bags were piled five or six bags high on the wharf and then solidly backed up against the side of the wharf, and I could only see the tops of the bags and the outer tier.

Q. And of course your selection of samples was limited to what you could see, I suppose?

A. Limited to less than I could see. I didn't sample every bag I could see.

Q. What was the other experience you had with creosote coffee?

A. Some years ago one of the Pacific Mail steamers—I don't recollect the name—in order to preserve the woodwork over the side of the vessel had put some wood preservative on the side of their vessel, or the hull of their vessel, and it had not properly dried, and it affected the coffee. It was also sold as damaged coffee.

Q. Now, to whom did you make tenders of this coffee?

A. To almost every dealer in San Francisco who we thought could possibly handle it.

Q. Who would those be?

As I don't know what you think.

A. There are only about six coffee houses in San Francisco that are large enough to handle a thou-

(Testimony of E. H. O'Brien.)

sand bags of coffee at a time. That would be McCarty Bros., J. A. Folger & Co., Brandenstein & Co., A. Schilling & Co., and Legee & Haskins, and Lewen.

Q. And you finally sold to Lewen?

A. We finally sold it to Lewen; as I have learned by many years' experience that Lewen is about the only buyer, or is the only buyer in San Francisco who will handle damaged or fermented coffees.

Q. Then your tendering it to those other people was more formal than anything else?

A. More to enlighten us as to about what it was worth, and in order to form an opinion as to what we could get for it.

Q. You didn't feel, then, that you knew what the coffee was worth, or the extent of its damage?

A. We knew it was worth only what we could get for it; and we believed we had as good facilities as anyone for obtaining its worth.

Q. Then there is really not much point in saying that you either got a good price or a bad price, is there, if it was simply up to some fellows to offer you what he wanted and you would take it?

A. The buyer of the coffee, Mr. Lewen, after making the bid made an effort to withdraw it—

Q. Confine yourself to the question, please. (Question read.)

Mr. DENMAN.—I submit that the answer is as definite a one as can be given to a question of that kind. The question itself is vague and indefinite, and an answer can only be given in the way of a general explanation. (Answer read.)

(Testimony of E. H. O'Brien.)

The WITNESS. (Continuing.) —while I was in the act of tendering his bid to the insurance company; and they made a personal visit to our office to intercept me before I got to the insurance company; and I told him I could not do it inasmuch as it had been submitted and was under consideration.

Mr. BURNETT.—I move to strike out the answer as irresponsive to the question, and as incompetent, irrelevant and immaterial.

Q. What efforts did you make outside of San Francisco to sell this coffee?

A. I sent samples of the coffee to Portland, Seattle, Los Angeles, New Orleans, Kansas City, St. Louis, Chicago, Cincinnati and New York.

Q. That was after you had sold it to Lewen? You were not then acting for the insurance company when you did that?

A. I sent them out immediately for account of the insurance company, or for account of whom it might concern.

Q. As a matter of fact, that sale to Lewen was closed, wasn't it, long before you could have heard from this correspondence?

Mr. DENMAN.—I submit that that is entirely irrelevant; because the question is not to whom he sold it, but what was the market for it.

Mr. BURNETT.—I propose to show by this line of examination that there was no effort made to get the best price; that Lewen was the only person in San Francisco who dealt in it; that that was well known by Mr. O'Brien, who had to accept any of-

(Testimony of E. H. O'Brien.)

fer Lewen chose to make for it, and then sell it, it may be, later on. I don't know anything about that. Answer the question. (Question read.)

A. I positively can't answer that question, because I would be solely dependent on memory; and at that time I was acting on the instructions of Messrs. Parrot & Co., who were the agents of the insurance company, and who had the additional advice of a Mr. Noldecke.

Mr. BURNETT.—I object to that as not responsive to the question.

The WITNESS.—I have to give it that way.

Q. Now, I have asked you a straight question as to the date of that sale. If you don't know, all you have to do is to say so.

A. I don't know the date of that sale.

Q. Do your books show the date of that sale?

A. Yes.

Q. Will you produce the books here, showing the date of the sale to Lewen? (The witness inquires of his office by telephone.)

A. I have learned by phone that it was the 6th of February.

Q. When did you send out samples to all these other cities in the United States? Do you know?

A. I would have to look on the sample memorandum to see when those samples were sent.

Q. You keep a record, don't you?

A. Yes, I do until such time as all the samples on that particular sheet would be sold; after which they would be destroyed or thrown away.



(Testimony of E. H. O'Brien.)

Q. Do you know the date you sampled this coffee? Do you know the date of your visit down to the dock?

A. No, it was a day or two after the arrival of the steamer, or a day or two after the arrival and discharge of the steamer.

Q. When was that?

Mr. OLIVER.—She discharged that coffee on the 30th of January, 1907.

Q. (By Mr. DENMAN.) How did you send those samples? By mail?

A. Either mail or express.

Q. (By Mr. BURNETT.) There were just a few days intervened, then from the time you took these samples down at the dock to the time the sale was closed to Lewen first? A. Yes.

Q. A very few days?

A. Then the intervening time was seven days; from the 30th of January to the 6th of February.

Q. You acted as Lewen's brokers afterwards, didn't you?

A. After he had purchased it, yes.

Q. You have your record showing the sales?

A. We, in conjunction with others, acted as Lewen's brokers. He had two others working on the coffee, besides ourselves.

Q. Well, your records will show, will they, any sales that were made of this lot of coffee for Lewen's account? A. Yes, sir; they would.

Q. You will produce those records, will you, if we should desire?

(Testimony of E. H. O'Brien.)

A. That will depend on whether it was compulsory or not. If not compulsory I would have to ask the privilege of the seller of the coffee, Mr. Lewen.

Q. Did you sell any considerable proportion—or what proportion—we will put it that way—what proportion did you sell of Lewen's coffee afterwards?

A. To the best of my memory we sold it all for Lewen's account, as it was all loaded and had to be sold as a whole, in the cars. It was en route somewhere as a whole thing.

Q. And did it all go to St. Louis, do you know?

A. Yes; at least I had instructions to ship it to St. Louis.

Q. Do you know what price it was sold at?

A. I would only answer that question under compulsion, or with the privilege accorded by the seller of the coffee.

Q. (By Mr. DENMAN.) Do you recollect at the present moment what it was sold for?

A. No, I do not. I recollect within a quarter of a cent what it was sold for. If you have no objection to the question being answered, I can see no particular harm in answering it.

Mr. DENMAN.—I have no objection.

The WITNESS.—It was sold at approximately one-half a cent a pound profit to him.

Q. (By Mr. BURNETT.) A half a cent a pound?     A. Yes, sir.

Q. And how soon after it was purchased by him, if you know, roughly speaking?

(Testimony of E. H. O'Brien.)

A. It was sold within two weeks, while it was en route from—if my memory serves me correctly the Southern Pacific Co. asked us to give them positive instructions where to send it, and for that reason he accepted the only offer that was made on the coffee; and never subsequently was there any other offer made, from any direction.

Q. With Mr. Lewen's consent I suppose you will be willing to produce any record you have in your office bearing on this sale?

A. Yes, I would like to add at this time, so as to make my statement a truthful one, that that half cent profit, or approximately half a cent advance was excluding—it was about a net half a cent advance to him; because it seems at that time the Haslett Warehouse Co. made very, very excessive charges to him. They had to take the coffee to some building that was almost empty and spread and air it, and furnish additional bags and additional help that was out of the ordinary transactions, and there was additional speed required; so that they worked, I believe, day and night in their efforts to get the coffee out of the state, for fear it would be condemned; so that those charges were most excessive to him. I think the advance was about a cent over the cost to him, excluding the charges.

Q. You don't recollect what the gross price was on the coffee?

A. I think the gross price was either  $6\frac{1}{4}$  or  $6\frac{1}{2}$  cents; but I knew at the time that he made about a half a cent.

(Testimony of E. H. O'Brien.)

Q. There was that much made?

A. Yes, he figured that he made about a half a cent.

Q. (By Mr. DENMAN.) That was after this complicated process had been gone through with?

A. Yes.

Q. In other words, the coffee was in an entirely different condition from the condition in which it was when it was sold to Lewen?

A. Oh, yes, the worst of it was taken out. It was put into several different lots of coffee—different grades.

Q. Then that half cent was the profit for handling it in the way that you describe?      A. Yes.

Q. Mr. Lewen is an old coffee man?

A. Oh, yes, he is a coffee dealer—jobber.

Q. He added his experience and skill to the handling of the coffee before the additional price was realized?

A. Yes, and the additional risk that there was in handling that kind of coffee.

Q. You said  $5\frac{1}{4}$  cents a pound was a fair price for that coffee when you sold it. Do you still hold that that was a fair price for the coffee, in that condition?      A. I do, most emphatically.

Q. Now, taking into consideration the condition of the coffee market since that time, what is your opinion as to the price  $5\frac{1}{4}$  cents for the coffee at that time?

A. It is my opinion that five cents could not be obtained for the coffee to-day.

(Testimony of E. H. O'Brien.)

Q. (By Mr. BURNETT.) Was not the market price the same otherwise for coffee—I mean not damaged coffee?

A. I could not say. I don't know. I think the market price is somewhat lower.

Q. (By Mr. DENMAN.) Enough lower to make any considerable difference?

A. Not in that kind of coffee, because having made efforts, and unsuccessfully, to sell that coffee, why, there is more enlightenment with reference to that coffee now. I am free to admit that with regard to those damaged goods, we were more or less groping as to its true worth; and with reference to a damaged article I have always found that the thing to do is to obtain the best price you can for it.

Q. Now, in view of all your knowledge of the coffee that you have from its subsequent history what would you say its value was on the day that it arrived at the dock?

A. In the condition that it was?

Q. In the condition that it was. I am not asking now the price you sold at, at that time, because as you say, it was speculative, to a certain extent, what the damage was. But now knowing what the damage was, if you were offering it for sale on the market then, with the knowledge you have now, what would you think the coffee was worth at the time it was placed on the dock?

A. If I had a bid to-day for the coffee, knowing the coffee and its condition, and what the possibilities of sale for it were, if I had a bid for the coffee

(Testimony of E. H. O'Brien.)

to-day of anything approximating five cents, I would recommend the acceptance of it.

Q. Would you consider that a fair bid?

A. I would consider that a fair bid.

Q. A fair value of the coffee?

A. Yes, more than a fair value of the coffee, as I don't believe that bid could have been obtained elsewhere.

Q. That is, five cents?                   A. Five cents.

Q. This party who finally bought the coffee of Lewin, did he see the coffee?

A. He saw a sample of the coffee.

Q. Here or where?

A. We sent it on. We sent over a pound or two pounds of the coffee as a sample to a broker in St. Louis who represents us, and he took it to his various buying acquaintances, the various people to whom he thought he might be able to sell it, and ultimately succeeded in selling it to a buyer there.

Q. You say that one thing that operated on the minds of the sellers at that time was the fear of the condemnation of the coffee, and you said there was some person moving to procure condemnation for the purpose of depreciating the value of the coffee for insurance purposes. Did I understand you correctly in that?

A. You understand me correctly. According to the form of their insurance policies they had to show that it was a total loss, and they believed—

Mr. BURNETT.—I object to his stating what somebody else's belief was.

(Testimony of E. H. O'Brien.)

Mr. DENMAN.—The purpose of this evidence is to show that there was reasonable ground for an attempted rapid disposition of the coffee; and for that purpose I desire to show what information came to these persons.

Mr. BURNETT.—What persons?

Mr. DENMAN.—The persons selling it.

Mr. BURNETT.—For the insurance company.

The WITNESS.—The broker.

Mr. DENMAN.—The information that came to the broker who was negotiating the sale. Go on, Mr. O'Brien.

The WITNESS.—The coffee was brought in to our office, and in our efforts to sell it I ran across Mr. Hiram Knowles, who was acting, I believe, for the Boston Insurance Co., and he had some coffee on either that steamer, either the "Santa Rita" or another steamer that came in with the same kind of damaged coffee, oil damage—no, I guess it was on the "Santa Rita"; I am certain of that—to Brandenstein, and the policy as it read was an unusual form of policy; that the coffee must either be totally damaged or totally lost or they would not pay it. It had to be shown that the coffee was unfit for use. Several of those manufacturers here so testified, or were willing to testify so, and were agitating with the authorities to have all of that coffee dumped or destroyed so that they could collect the insurance; and we were governed to a very very great extent by that, fearing that his man would have seven or eight thousand dollars worth of property that he

(Testimony of E. H. O'Brien.)

would have been responsible for, destroyed, were they to succeed in having the coffee absolutely condemned as unfitted for use. Legal efforts were being made along those lines.

Q. Do you know who those coffee people were who were acting that way?

A. M. J. Brandenstein & Co.

Q. Anybody else?

A. No. A. Schilling & Co. would have done that, as they had the same form of policy, but their insurance company paid them in full and considered the coffee was a total loss. Any recovery they might have made at the time would have been considered salvage.

Q. This, I understand, is the information that came to you?

A. Yes, that was brought to us right along.

Q. (By Mr. BURNETT.) Well, did that information affect you one way or the other?

A. It did, to this extent: J. A. Folger & Co., who are one of the largest, if not the largest coffee roasters here—I went to him with Mr. Knowles, who was acting for the Boston Insurance Co., and he gave us a statement, a written statement, that to the best of his knowledge and belief that coffee was unfit for use, and was therefore valueless. That statement I believed, and in fact knew, that Brandenstein knew of, and could have used in furthering his cause to have the coffee destroyed, absolutely destroyed. The coffee by that time, or these 1062 bags, were Lewen's property, and as it was a specu-



(Testimony of E. H. O'Brien.)

lative deal on his part, recommended by myself as a possible chance of making something off of it. I didn't want to see him lose that amount of money on it. And therefore at Mr. Bickford's suggestion and recommendation the coffee was shipped so as to get out of the jurisdiction of the state authorities.

Q. (By Mr. BURNETT.) Well, that was all after it had been sold to Lewen, wasn't it?

A. Yes; the utmost speed was used. In fact, they were working night and day to get it out of the state.

Q. The agitation, though, had not reached any considerable extent until after the sale to Lewen, had it?

A. Yes, prior to the sale to Lewen. Brandenstein had employed his brother, H. U. Brandenstein, the attorney, to use his best efforts to get—

Q. Well, the net result of that scare was to cause it to be sold for less than it otherwise would have been sold for, was it not?

A. If I had a bid come from any section of the United States or from anyone, of five and a quarter cents I would have recommended its acceptance. Mr. Bickford had had many years more experience than myself, and he recommended that coffee to be sold. In fact, it was with his knowledge and on his recommendation that the coffee was sold at five and a quarter cents.

Q. Then the net result of your testimony is, as I understand it, that this scare really did not cut any figure in the price received in the sale to Lewen?

(Testimony of E. H. O'Brien.)

A. It did have some weight. Possibly it had weight. We had every reason to believe, and still believe, that the sale to Lewen was more than a good one, for account of whoever it might concern.

Q. Well, if there had not been that scare would you have thought you ought to have got more from Mr. Lewen, or not? If you had never heard anything about that? Do you think you could have got more than five and a quarter cents? Or did you consider that you were getting all that the coffee was worth?

A. If we never had heard anything about it we would have recommended the sale to Lewen at five and a quarter cents.

Q. Then I don't see how you figure that that scare had any effect in the price obtainable.

A. It made us feel just that much more elated over the successful sale, as we construed it.

Q. That is the idea. Is there ever in the market any considerable extent of coffee that is damaged by creosote?

A. No, there is not any considerable amount of coffee arriving in this market damaged by creosote.

Q. Is there in any market? A. No.

Q. Is it an unusual method, an unusual form of damage to coffee? A. A most unusual form.

Q. The consideration of the taint, and all that kind of thing, is a speculative one, is it?

A. It is.

Q. And people have not got the requisite experience by which they can calculate those things?

(Testimony of E. H. O'Brien.)

A. They have gotten a great deal of experience from this particular lot of coffee.

Q. Yes, but outside of that it is something new to coffee experts?

A. Well, not altogether. Well, not altogether, because they have experience drawn from lots of water-damaged coffees or other kinds of damaged coffees, and generally speaking, coffee is most sensitive, and retains a damage, no matter what process you might put it through, for an interminable length of time.

Q. (By Mr. DENMAN.) You said the coffee was sold for five and a quarter cents. Was that on cash payment or deferred payment? Or was there a discount for cash?

A. I can't say without looking up my records. It was not a deferred payment. Whether it was sold at five and a quarter for cash or subject to the usual coffee discount of two per cent for cash within ten days or two weeks.

Q. That you can discover from your books?

A. If I remember rightly the coffee was sold at five and a quarter cents on New York weights, and there was a loss of a thousand pounds or more on the coffee, that had fallen from the worst damaged bags that were rotten through the contact or coming in contact with oil, and was afterwards cleaned up in the hold of the vessel. I don't know whether it was cash or cash less two per cent.

Q. (By Mr. DENMAN.) Your records will show? A. Yes.

(Testimony of E. H. O'Brien.)

Q. (By Mr. DENMAN.) It was either two per cent off, or cash?

A. Yes, on New York weights.

Q. I think you have testified to 1067 bags. Do you recollect the number?

A. I believe I sold 1067. That is the memorandum that I have of it. But I believe what we sold to Lewen was 1062 bags.

Q. Is it not the fact that that memorandum that you have is the memorandum of the number of sacks that were shipped on the vessel, and not the number of bags that were sold to Lewen?

A. This is the number of bags that were sold from Arbuckle Bros. to Leege & Haskins.

Q. And not the number of bags that were sold to Lewen? A. Yes.

Q. Haven't you got the number of bags that you sold to Lewen? A. No.

Q. Haven't you got the number on your books?

A. I don't know as it was sold in bags or sold by the number of pounds that there was there. There was several hundred or a thousand pounds or more that was gathered on the wharf or in the hold of the vessel afterwards that there was some controversy with Mr. Oliver about, as to whether Mr. Lewen was entitled to it or not—to the ownership of it.

Mr. OLIVER.—He got it later. I gave it to him. I think I gave him 22 or 31 bags.

The WITNESS.—It was sold him on New York

(Testimony of E. H. O'Brien.)

weights, and he asked or contended that he was entitled to whatever coffee there was there.

Mr. OLIVER.—He made a demand for it.

Q. (By Mr. DENMAN.) Did you ever see that second batch? A. No.

Q. It was not sold at this sale to St. Louis?

A. No, I don't know whether it was or not. It seems to me that he mixed it up and sold it subsequently at four cents. I think we did sell it at four cents, and some other truck, too, like it; other damaged coffee. This Mr. Lewen is a junk-dealer. He buys anything that is damaged and that is sent to the dump. He is the only dumping ground that we have for that class of coffee.

Q. (By Mr. BURNETT.) This coffee you have testified would have been worth 11 cents if in sound condition at the time of its arrival?

A. Approximately; yes.

Q. Was that 11 cents straight or was some of it more than 11 cents and some of it less than 11 cents; or was it all straight?

A. That was all one lot of coffee, and it was worth approximately 11 cents, we sold that lot of coffee originally to Leege & Haskins for 9½ cents in New York. Ordinarily dealers figure that the difference between New York and San Francisco is one cent a pound. The freight rate is 90 cents; the rail freight rate is 90 cents. Added to that is the time in transit, which in this case was 60 days, or about 60 days. The interest would be one per cent of its value. The loss of weight on all coffees, whether

(Testimony of E. H. O'Brien.)

they come by rail, or steamer, is about another one per cent; sometimes as much as two per cent.

Q. The point I was getting at is this: Each bag of this coffee was of the same value as the other bags? A. Yes, it was one lot of coffee.

Q. (By Mr. DENMAN.) But that sale was made in New York some time in September, was it not?

A. Yes; September, 1906, I believe; about the 21st of September. It was made the 5th of September and shipped about the 21st of September.

Q. And the valuations you have given here of  $5\frac{1}{4}$  and 11 cents are valuations of February, 1907?

A. Yes.

Q. And they are fair valuations, each of them, as you have testified heretofore?

A. That is our opinion.

(Further hearing continued to Saturday, December 12, 1908, at ten A. M.)

[**Testimony of C. G. Cambron, for the Respondent.**]

Wednesday, December 30th, 1908.

C. G. CAMERON, called for the respondent, sworn.

Mr. KNIGHT.—Q. Mr. Cambron, you are a coffee broker, are you not? A. Yes, sir.

Q. Doing business here in this city and county?

A. Yes, sir.

Q. How long have you been engaged in that?

A. In the brokerage business 17 years.

Q. And all kinds of coffee? A. Yes, sir.

(Testimony of C. G. Cambron.)

Q. I will ask you whether or not you handled or sold the coffee which came to this port by the steamer "Santa Rita" consigned to Brandenstein & Company in the year 1907?      A. I did.

Q. What kind of coffee was that?

A. It was Santos coffee and Bogota coffee.

Q. At what time did you first take hold of that coffee?      A. In February some time.

Q. Of that year?      A. Yes, sir.

Q. Do you know about how much of that coffee was Bogota coffee and how much Santos coffee?

A. Yes, sir. The total lot of Brandenstein's coffee, the exact amount, was 760 sacks; a few bags more or less.

Q. Seven hundred and sixty sacks?

A. Some place around there.

Q. That is, Bogota?

A. It could be easily ascertained; I don't remember the exact number.

Q. I don't care for the exact number. Can you give it in percentage how much there was in Bogota?

A. There was probably about half of it that was Bogota coffee.

Q. Was about half Bogota and half Santos coffee?

A. Yes. I could give you the exact by looking it up, if it is necessary.

Q. Now, confining yourself to the Santos coffee, will you state whether or not you carefully examined that coffee, sampled it roasted it, tested it, and

(Testimony of C. G. Cambron.)

handled it in any way to determine the damage, if any, that it had sustained?

A. I sampled it and roasted it and tested it on numerous times, first on the wharf and afterwards in the warehouse. I sampled it thoroughly in my office, spent days on it, cupping it and experimenting with it, grading it according to its degree of damage.

Q. Where did you get that coffee from, from the Steuart Street Wharf?

A. Originally from the Steuart Street wharf, part of it, and the balance, I think, from the California Warehouse. Part of it had already gone into the warehouse when I sampled it.

Q. Taking the coffee market as it existed then, what was the value of Santos coffee in good condition?

A. Coffee of that kind in good condition would be worth from  $9\frac{1}{2}$  to  $10\frac{1}{2}$ , according to grade, probably nearer the latter figure, from 10 to  $10\frac{1}{2}$ .

Q. Now, state what damage, if any, that coffee had received, as far as you could ascertain from sampling it and tending it, etc., in the manner you have explained?

A. The Santos coffee had suffered to an extent of about 20 per cent.

Q. Now, did you buy or did you sell, as a broker, or otherwise handle that Santos coffee of the Brandenstein shipment?      A. I bought it all.

Q. Yourself?      A. Yes, sir.

Q. At what price did you buy it?



(Testimony of C. G. Cambron.)

A. Six cents, subject to the usual cash discount of 2 per cent.

Q. Of 2 per cent cash discount?

A. Yes, sir.

Q. Under what circumstances did you make that purchase, Mr. Cambron?

A. Well, what do you refer to in that word?

Q. I mean, was it offered for sale to the market generally, or how did you come to buy it?

A. That I could not say, whether they had offered it or not.

Q. I only want what you yourself know?

A. That I don't know—I did not offer it at all. When I was prepared to buy the coffee I went there and bargained with them, bargained with Brandenstein for the coffee.

Q. And purchased it for 6 cents less 2 per cent cash discount?      A. Yes, sir.

Q. By the way, when was that; how long after February, or was it during the month?

A. I think that was in September, the first of September, approximately; it might have been late in August; I could not say positively.

Q. Are you familiar with the condition of the coffee market that has existed at this place in the month of February, 1907?      A. Yes, sir.

Q. What was the condition of the coffee market at that time?      A. Quite active.

Q. How did its condition compare with the market as it existed in the month of September, when you purchased this Santos coffee?

(Testimony of C. G. Cambron.)

A. It was, locally, very much more active in February, very much more active, owing to a failure of the usual crop to arrive on time from Central America; there was more or less a scarcity of coffee at that time owing to late arrivals from Central America, which made an active demand locally at that particular time.

Q. Was there such a demand in existence after the month of February for coffee?

A. Well, I could not testify as to that without going back over statistics to find out. Everything was moving along and I was moving along with it, but I can't remember the stages that it went through.

Q. Can you state how the market was in February as compared with the condition of the market in September?

A. I will state, as I stated a moment ago, it was very much more active, owing to the fact that there was a temporary scarcity of coffee, because the Central American coffee had failed to arrive.

Q. In your opinion, Mr. Cambron, what was the value of that coffee, I am referring now to the Santos coffee of the Brandenstein shipment—what was the value of that coffee in the month of February, 1907, the going market value, in the condition in which it was, upon its delivery from the ship by the ship?

A. I would state that there was probably 20 per cent damage from its presumptive value in its original condition.

(Testimony of C. G. Cambron.)

Q. So that would mean 20 per cent off from 9½ or 10?

A. Say from 10 to 10½. I cannot remember the various grades; I could not do it positively unless I went all through it again.

Q. Will you state whether or not there was a market then for coffee damaged as this coffee had been? A. Yes, there was.

Q. Now, you purchased it at 6 cents, I think you said in September? A. Yes, sir.

Q. In your opinion what was the value of that coffee at that time?

A. Well, I thought it was worth more.

Q. In or about the month of February, 1907, did you know of the sale of any damaged Santos coffee arriving from the "Santa Rita"?

A. Yes, I heard of it.

Q. When did you first learn of that sale?

A. Almost immediately after it happened, but I don't remember the date. I know it was immediately after it happened I was told of it.

Q. Was that coffee offered to you?

A. No, sir.

Q. Was any opportunity given to you to make a bid on that coffee?

A. No. I didn't know it was in existence until it was sold.

Q. Did you receive any sample of that coffee after its sale?

A. I had a sample of the coffee, I am not sure whether the sale was consummated then or not; it

(Testimony of C. G. Cambron.)

was all right at that period; I could not tell whether I received that sample after the sale or not. Probably the sample was given to me to look at after the sale had been made, I could not say whether it was before it was made or after it was made. The chances are that the transaction was already consummated, because I was very anxious to get hold of that coffee, and I know I could not get it.

Q. Was that the Leege & Haskins coffee?

A. Yes, sir.

Q. Was that Santos coffee?

A. That was Santos coffee.

Q. Will you state how the sample which you had of that Santos coffee compared with the Santos coffee in the Brandenstein shipment which you subsequently handled?

A. It was of the same general character.

Q. And worth about the same?

A. About the same.

Q. The sample was a fair sample?

A. It was a mixed sample. The lots were not segregated in the sample I received of the Leege & Haskins; it was all alike. I will state the Brandenstein coffee was just about the same grade; there was no great difference in these coffees. There were no low grades at all. They are coffees of about a class.

#### Cross-examination.

Mr. DENMAN.—Q. Mr. Cambron, you say that there was a regular market for damaged coffees in February, of that year. What do you mean by that? Were they quoted on the market?

(Testimony of C. G. Cambron.)

A. No, sir.

Q. What does that mean?

A. It means that they were for sale—if they were for sale they could have been very easily sold; there was an active demand for them.

Q. You received a sample, you say; from whom did you receive that?

A. From Mr. Oliver. I did not sample the coffee Mr. Oliver gave me.

Q. That is, Mr. Oliver who is here, the agent of the ship?

A. Yes, sir.

Q. He gave you the sample about that date?

A. Yes. I could not state the exact date.

Q. That was about the time that the vessel arrived?

A. No, it was after the vessel had arrived.

Q. About the time the coffee was sold?

A. About the time it was sold. I think Mr. Oliver gave me the sample and told me the coffee had been sold. I cannot remember positively as to that.

Q. He told you it was a mixed sample?

A. Yes, sir.

Q. Do you remember how much it was?

A. How large a sample?

Q. Yes.

A. Probably 4 or 5 or 8 or 10 pounds; probably 7 or 8 pounds.

Q. You don't know where Mr. Oliver got that, do you?

A. No, sir.

(Testimony of C. G. Cambron.)

Q. Are you quite certain that Mr. Oliver told you it was of the Leege & Haskins coffee?

A. Yes, sir.

Q. Or other coffee on the vessel?

A. It was the Leege & Haskins lot.

Q. Now, that is all you know about it. Just that that sample was showed to you?

A. I know very little about that sample; I only know that I had a sample handed to me and I was told what it was.

Q. Did you make any cupping tests of that?

A. Yes, sir.

Q. Why did you do that?

A. To find out about that.

Q. What did you want to find out?

A. I am interested in all coffee that comes in and I wanted to get hold of it if it was for sale.

Q. Of whom did you inquire to get hold of it?

A. Nobody but Mr. Oliver.

Q. Did you know in whose hands it was?

A. No, sir.

Q. Did you ask Mr. Oliver in whose hands it was?

A. I probably did.

Q. Did he tell you?

A. I could not say; quite likely he did.

Q. Why didn't you go and ask them if it was for sale?

A. There is an unwritten law among us that if a broker has coffee for sale another will not try to buy it from him.

(Testimony of C. G. Cambron.)

Q. Suppose you wanted to buy it from a broker yourself?

A. I would not have the privilege of buying it from the broker, under the circumstances; the broker is supposed to have that coffee for sale and no other coffee broker would try to buy it or interfere with him in any way; just so much so as one doctor would not interfere with another doctor's patients.

Q. Suppose you wanted to buy it yourself?

A. At that time I would probably would not have wanted to buy it myself because I knew so little about it.

Q. You didn't know much about it?

A. No, sir.

Q. Do you think you knew enough about the sample to know it came from that lot?

A. I would not have bought it without sampling.

Q. Now, when you said a little while ago you didn't know where the coffee was, would you like to refresh your memory before placing your testimony so—what did you refer to? I understood you to say that you wanted to get hold of the coffee, but you didn't know where it was, and for that reason you could not get it; I understood you to say later on it was probably in the hands of a broker and you could not get it. Was it because you didn't know where it was or because it was in the hands of a broker?

A. If that coffee was in the hands of a broker, and Mr. Oliver stated that such was the case, that would have settled it.

(Testimony of C. G. Cambron.)

Q. You said you were very anxious to get that coffee; you do remember some circumstances prevented your getting it. Now, which one was it?

A. I do not remember which circumstance it was.

Q. It might have been in the hands of a broker and you did not go after it on that account?

A. Yes, it is quite likely if it was in the hands of another broker I would not go near it, because there is an unwritten law if one broker has it another will not go near it.

Q. You did not want to buy it for yourself?

A. At that time?

Q. Yes.                      A. No, sir.

Q. You wanted to have a chance to place it on the market?                      A. Yes, sir.

Q. Did you have a customer for it?

A. Yes, sir.

Q. Who did you have?

A. I couldn't tell you that.

Q. You won't tell me that?                      A. No, sir.

Q. Did that customer know that coffee was in existence? Did he see any of those samples?

A. From the appearance of the coffee and my knowledge of the coffee I knew I would have a customer for it. I probably did not have any offer on the coffee, I certainly did not have any offer on the coffee, because I didn't know it was for sale. I would not look for a customer until I knew it was for sale. If the coffee had been on the market I know I would have been able to find a customer for it very readily.



(Testimony of C. G. Cambron.)

Q. How about the Brandenstein coffee, did you try to get that?

A. That was offered to me, I had possession of that.

Q. When did you have possession of that?

A. I had full knowledge of that coffee by being employed to sample it on the wharf.

Q. Who did you sell that to?

A. I bought it myself.

Q. When did you buy it, in September?

A. Either August or September.

Q. Why didn't you buy it before?

A. I could not, it was not for sale. I could not get any price on it; I could not get any definite understanding or find out who could fix the definite price; in fact, the matter was held up.

Q. Have you any of that coffee still?

A. No, sir.

Q. What did you do with it?

A. Disposed of it.

Q. To whom?           A. I could not tell.

Q. Was it to a San Franciscan?

A. Part of it.

Q. Was there not a very serious oil damage to that coffee?

A. Portions of it was very serious, and some was not.

Q. Some serious and some was not?

A. Yes, sir.

Q. It depended on how exposed it was to the oil?

(Testimony of C. G. Cambron.)

A. I presume you are referring to the Brandenstein coffee. I know nothing about the other coffee further than its general character, that it was like the Brandenstein coffee, but the Brandenstein coffee I am thoroughly posted on; part of that coffee was very seriously damaged, and part of it was not.

Q. What in your opinion occasioned the difference between one and the other?

A. Well, it certainly was a matter of exposure on one hand, and the other was the difference in the kind of coffee; different coffees have a difference in susceptibility.

Q. Was there any difference between the susceptibility—as I understand you the Santos coffee was more susceptible?

A. No, on the contrary, the Santos coffee was less susceptible.

Q. Now, in the Santos coffee there was a variation; some was more injured and some less injured?

A. Yes, sir.

Q. There was a great deal of variation in that?

A. The variation in damage in the Santos coffee was very slight. The Santos coffee, I do not think varied more, in fact I demonstrated it by the sales that were afterwards made, that the damage in the Santos coffee would not vary more than 5 or 6 per cent; in some slight case it might be 10 per cent.

Q. At the end of that period when you sold that coffee, was there any noticeable aroma to it or had it lost it?

A. No, it was there.

Q. Was there any taste in it?

(Testimony of C. G. Cambron.)

A. Yes, there was taste in it. Are you referring to the Santos coffee?

Q. Yes.

A. Yes, you will even find at the end of six or eight months there is still a little taste in it; but not any more—not a particle more or less than it did at first.

Q. It did not?

A. It had not changed a particle.

Q. Is that so?

A. It had not changed in six months; the coffee was identically the same as it was to start with.

Q. I didn't know that.

A. Not the slightest. It would not come off in a few years.

Q. How did it get in?

A. I don't know. Of course, coffee is very porous it is very much like a sponge, and it has a certain percentage of water in it, and as the climatic conditions change or by the heat it is exposed to in the hold of a ship, it will open up or close up and it will take in an odor very much more rapidly at one time than it will at another. It opens up. It is porous and it gets in there; once it is there it is there for all times; you can't get it out. I made all the experiments in the world to try to eliminate that flavor from the coffee, and I could not get it out.

Q. Well, do you mean to say that that was permanently damaged?

A. It was permanently damaged, damaged to a certain extent.

(Testimony of C. G. Cambron.)

Q. Now, you did not sell any of that damaged coffee in February of last year?

Mr. KNIGHT.—Are you referring to the Santos or Bogota?

Mr. DENMAN.—Santos.

A. I did not get hold of it to sell, until September.

Q. Till September? A. Yes, sir.

Q. You did not approach any customer on that subject because, as you say you did not have the coffee?

A. I did not have it in hand for him.

Q. So that all you know about there being a market for it is your belief that you could have found a coffee buyer for it?

A. Not on the Brandenstein lot. Between February and September I had that coffee in mind constantly and long before I succeeded in purchasing it. I don't remember at what period I had this matter settled, but I had that coffee all disposed of.

Q. Then on the Brandenstein lot you tried to get *find* a buyer or make a sale before you made a purchase of the coffee; that is what you did?

A. I had several in view.

Q. And when you had that sale in view you went around to Brandenstein and tried to buy the coffee?

A. I was trying to buy the coffee all the time.

Q. When did you first go to Brandenstein?

A. I did not go to Brandenstein at all; I did not know who had the coffee for sale. I notified Mr.

(Testimony of C. G. Cambron.)

Oliver that when the coffee could be offered definitely I wanted a chance to buy it.

Q. When did you notify Mr. Oliver?

A. I don't remember. I could not tell the date.

Q. Some time in July last?

A. I could not tell you; it might have been June. It is quite a period of time that that thing was hung up for.

Q. What warehouse was that coffee stored in, do you know?

A. In the California and in the Humboldt, I think it was.

Q. Who paid the storage on it?

A. I don't know.

Q. You didn't do that?

A. No, I didn't do it.

#### Redirect Examination.

Mr. KNIGHT.—Q. Mr. Cambron, you spoke of the difference in susceptibility of the different kinds of coffee to take in a foreign odor or fumes, or that would be affected by something that was extraneous to the coffee. Is there any difference between Bogota coffee and Santos coffee in that respect?

A. Well, the Bogota coffee was washed and the Santos was unwashed coffee. There is a difference between washed coffees and unwashed coffees as to susceptibility.

Q. The Santos is an unwashed coffee?

A. Unwashed.

Q. And the Bogota?

(Testimony of C. G. Cambron.)

A. The Bogota that came here was all washed, although they have washed coffees and unwashed coffees in every country. The coffee that is washed is always more susceptible than unwashed coffee; that is, it is much more porous and much more susceptible to damage and fermentation and mould and damage of every description.

Q. Do you know whether or not the coffee of which you received a sample, or rather, was the sample of coffee which you received a sample of washed or unwashed coffee?

A. It was unwashed coffee.

Q. It was an unwashed sample? A. Yes.

Q. Can you state what is and what was at that time the difference in the market value at this port of Bogota and Santos coffee? That is, Bogota unwashed and Santos washed?

A. Bogota washed and Santos unwashed?

Q. Yes.

A. I would have to speak of lots that came here.

Q. Assuming it to be in good condition?

A. For washed coffee—some washed coffees are not worth as much as others.

Q. I will speak of the ones that did come here.

A. There was probably a difference of 2 cents a pound.

Q. In favor of the—

A. In favor of the Bogota.

Q. How was this Santos coffee, damaged as you say this coffee was, commercially available?

A. How is that?

(Testimony of C. G. Cambron.)

Q. How was this Santos coffee, damaged as you say this coffee was, commercially available?

A. I don't understand.

Q. Would it be used by itself or would it be used in a mixture with other coffees?

A. Coffee slightly damaged as that coffee was, speaking of the Santos, would certainly only be used blended with something else; it would not be turned out straight; if it was turned out straight the damage would be perceptible, whereas if the coffee was mixed in with other coffees it would be lost.

Q. To what extent—of course, it would depend, I presume, upon the blend and character of the coffee it was blended with—but to what extent, could you say, generally, the damage of that Santos coffee would be noticeable, if at all, to the ordinary trade?

A. It would not be noticeable at all; no roaster would use it all.

Q. Were you prepared to purchase this Legee & Haskins coffee, about the month of February, 1907, if it was put upon the market through any other source than some coffee broker?

A. What is that?

Q. Were you prepared to market this Legee & Haskins coffee, Santos coffee if it was put on the market in or about the month of February, 1907, provided it did not go to some broker, in which case, I understand you said the unwritten law of your profession would prevent you from bidding on it—

(Testimony of C. G. Cambron.)

that is, if it did not go through the hands of some other broker?

A. I certainly should have made a try to get it; I should have made an attempt to get hold of it.

Q. I think you have given us what you consider your estimate of the value of it at that time?

A. Yes, sir.

Recross-examination.

Mr. DENMAN.—Q. You got 760 sacks of this coffee from Brandenstein? A. Yes, sir.

Q. You paid six cents, with two per cent off for cash? A. Yes, sir.

Q. And I understand you would have attempted to have gotten hold of the coffee in February if some other broker had not got it?

A. I got no opportunity for attempting to bid; I will simply make that statement, as I have said, that if I would have known about it I would have tried to have got hold of it, because I knew it was a good thing.

Q. You would not purchase the coffee yourself at that time?

A. I would have purchased it at that time if I had known there was any such attempt to sell it at such a price; I would have attempted or made any attempt to buy it at that price or more.

Q. Do I understand you to say that when a customer wants to buy coffee himself he won't go to another broker?

A. I said another broker in this market?

Q. You don't do it? A. No.



(Testimony of C. G. Cambron.)

Q. But you bought this from Brandenstein?

A. Yes.

Q. You are a broker in this market?

A. Yes.

Q. Now, as I understand it, at the time this coffee came in, you would have bought it in if you could have got it at a fair price?

A. Yes, sir.

Q. You would have taken it all?

A. Yes, sir.

Q. Do I understand you that because it was in the hands of another broker you would not buy it?

A. That would be the simple reason. If it was in the hands of another broker I would not attempt to.

Q. You would not buy it off another broker if you were buying it yourself?

A. I would not go near the other broker at all. The other broker having it in charge would put me out of it.

Q. Suppose you wanted to buy it yourself. Suppose you went to a coffee broker, and you became a coffee purchaser, do you mean to say that you could not under the rules of business in this town go and buy from another broker because you were a broker?

A. I would hesitate to do it; it would be a long time, sure. I don't think I would; I don't think I would go near him.

Q. Why not?

A. Because a broker having in charge that is supposed to be handling that coffee in the best way it

(Testimony of C. G. Cambron.)

can be handled; he is handling that coffee and trying to sell it, and I am in the same position myself with coffees at the present time, and I would not want another broker to come in and interfere with coffee business and get control of it.

Q. I am not talking about your getting control of this coffee to sell to somebody else. I am now talking about your becoming a purchaser of the coffee. Do you mean to say that you would not go and purchase coffee of another broker for yourself because there is some rule of trade that steps in the way of it?

A. Not necessarily so, but I can assure you I would not go near him and try to do it.

Q. Why not?

A. Because it might cause ill feeling with other brokers.

Q. If you should go and ask him to sell to you at a certain price how would that cause ill feeling on their part?

A. He would recognize the fact that I was stepping in and trying to interfere with the coffee trade on his part. It is not customary for a broker to step in and buy coffee from him, a broker too.

Q. Then do I understand when a broker wants to buy for himself he will not go to another broker?

A. Yes.

Q. Where will he buy then?

A. He will let it alone.

Q. Then he would never buy?

A. Not under those conditions.

(Testimony of C. G. Cambron.)

Q. Not under those conditions?

A. Not under those conditions; he won't go to the other broker.

Q. How then would you buy coffee in San Francisco if you wanted to buy yourself, and the coffee was all in the possession of other brokers to sell?

A. I would not get a chance to buy it, unless a broker offered it to me of his own volition.

Q. Then I understand you to swear here that it is considered improper for a broker who desires to buy coffee for himself to go to another broker and ask him to sell at a certain or fixed price?

A. You are citing a case that seldom exists. A broker never wants to buy coffee for himself or purchase coffee for himself. That is an unusual circumstance.

Q. I know it is an unusual circumstance. That is it just exactly. I am asking you if there is any rule of the trade that meets that circumstance and that would prevent you from going to another broker and saying to him that you wanted to buy that coffee?

A. There is no rule, nothing but a delicacy on the part of one broker not desiring to interfere with what another broker is doing.

Q. How would that interfere, if you facilitated making the sale? How would that interfere with the other broker? Supposing the other broker was looking for a customer for that coffee; how would that interfere?

(Testimony of C. G. Cambron.)

A. It probably would not interfere with the making of the sale.

Q. Why didn't you go to the broker and say "I will buy it from you"?

A. At this period I am not sure whether I received the sample, as I testified earlier in the case. I am sure, quite sure, that when he gave me that sample Mr. Oliver told me it was already sold; I think you will find he will so state. I do not remember at this time, but I think at the time Mr. Oliver handed me the sample the sale was already consummated.

Q. Then all this talk about delicacy between brokers is mere piffle. The truth of it is the reason you did not go after that coffee was it was probably all sold?

A. No, it is not piffle. I had been informed the coffee was sold, but if Mr. O'Brien had had the coffee for sale I would not go near him for it.

Q. I asked you whether you would go and offer a price for it?

A. I would not offer a price for it.

Q. Why?

A. Because I had no opportunity for sampling it myself, Mr. O'Brien had the samples in his possession. If Mr. O'Brien had offered this coffee to me and had said he wished to sell, it would have been another matter, but Mr. O'Brien not having offered them to me is sufficient proof he didn't want to sell them to me and I would not go near him and ask him to sell them to me. It is simply a matter of

(Testimony of Charles Nelson Fulcher.)

delicacy of feeling on the subject of interfering with another broker's work.

Q. By assisting in making a sale?

A. Well, another broker would not like to have a broker assist in making a sale. I know I would not. I am sure that Mr. O'Brien would not, and I am sure any other broker would not.

**[Testimony of Charles Nelson Fulcher, for the Respondent.]**

CHARLES NELSON FULCHER, called for the respondent, sworn.

Mr. KNIGHT.—Q. What is your full name?

A. Charles Nelson Fulcher.

Q. You were employed in the Little Mail Dock and on the Steuart-street dock in connection with the unloading of the "Santa Rita" in the year 1907, were you not? A. Yes, sir.

Q. In what capacity? A. As clerk.

Q. What were your duties in connection with the unloading of the "Santa Rita"?

A. I kept the ship's books.

Q. You kept the ship's books?

A. Yes, sir.

Q. Which indicated the quantity of stuff which was delivered by the ship? A. Yes, sir.

Q. To the consignees?

A. Yes, to the consignees.

Q. Will you state where the different consignments of coffee that is, the Leege & Haskins coffee, the Brandenstein coffee, and the Schilling coffee were discharged?

(Testimony of Charles Nelson Fulcher.)

A. The Schilling coffee and the Leege & Haskins coffee was discharged at the Little Mail Dock.

Q. And the Brandenstein coffee?

A. The Brandenstein coffee at the Steuart-street wharf.

Q. Was all the Brandenstein coffee delivered at Steuart street?

A. I think nearly all of it—no, some of it came out at the Little Mail Dock, but a very small portion of it.

Q. You saw the coverings of the coffee as the coffee was discharged?      A. Yes, sir.

Q. Did you note whether or not any of these coverings appeared stained?

A. Yes, they were.

Q. Were you present when the usual test was applied—when a test was applied to determine whether or not those stains were made by salt or fresh water?      A. Yes, sir.

Q. Can you state what the test as usually applied is?

A. Yes, it is acid, which showed fresh water.

Q. Which showed fresh water?      A. Yes.

Q. That is it showed it was not fresh water?

A. It was sweat.

Q. It gave it the appearance of having been sweat?      A. Yes, sir.

Q. Did you see any indications on the outside coverings of this coffee of stain by oil, damage by oil?

(Testimony of Charles Nelson Fulcher.)

A. Let me see. There was one bag that that I think was pretty badly stained by oil.

Q. How about the others?

A. Simply by sweat.

Q. Now, did you take any samples of that coffee, Mr. Fulcher?      A. Yes, sir.

Q. Will you state what samples you took and for whom?

A. I took one or two pounds home myself, just to sample and try it to see what was wrong with it.

Q. From what did you take that sample of the coffee?

A. Indiscriminately; I did not take it from any particular bag.

Q. Did you take it from any particular kind of coffee?      A. No, sir.

Q. From whose consignment of coffee did you take that sample?

A. I really could not say; I don't remember.

Q. Where did you take it?

A. On the Little Mail Dock.

Q. Do you know whether it was Mexican coffee or Santos coffee or Bogota coffee?

A. No, I could not say.

Q. You can't tell that?

A. No, I could not tell. I took some home with me and I sampled it pretty thoroughly just to see what the trouble was.

Q. In what condition were the bags in which that coffee came as regards their serviceability?

A. Oh, the bags were in good condition.

(Testimony of Charles Nelson Fulcher.)

Q. Was there any leakage from the bags?

A. Yes, there was some leakage, due to tearing and handling.

Q. Were the bags new bags, or old bags; were they worn or apparently not worn?

A. They had been handled several times.

Q. Do you know Mr. Kopitz?      A. Yes, sir.

Q. Who is he?

A. Mr. Kopitz; I know Mr. George Kopitz.

Q. Was there a Mr. Kopitz taking samples down there or around on that wharf when the samples were being taken?      A. No, sir.

Q. Was there a Mr. Kopitz who was employed at that time on the wharf?

A. He was employed on the wharf.

Q. By whom?

A. He was employed by, I don't know who he was employed by, he had these logs down there, these cedar or oak logs, an entirely different cargo from this.

Q. Not employed by the owner or charterer of the "Santa Rita"?

A. No, he had no connection with it whatever.

Q. Do you know whether he took any samples himself or supervised the taking of any samples?

A. If he did, I have no idea who he would do it for.

Q. If he did, it was not part of his business, so far as you know?

A. No, I had principal charge of it; he did not.



(Testimony of Charles Nelson Fulcher.)

I know Mr. Kopitz and I know he had no right to interfere with my cargo.

Q. Was there any of this coffee mouldy, that you say on the Little Mail Dock—any mouldy, apparently subject to moisture?

A. Moisture, yes.

Mr. DENMAN.—Q. There was no mould on them?

A. No mould, just moisture on the back.

Mr. KNIGHT.—Q. Moisture on the back?

A. Moisture on the back, yes.

Cross-examination.

Mr. DENMAN.—Q. Mr. Fulcher, you say that there was only one bag oil damaged. Was that badly damaged, that one?

A. It was pretty badly damaged, oh, yes; that bag was all gone.

Q. Some oil on some other bags, was there not?

A. No, sir.

Q. Did you examine every one of those bags yourself? A. I did.

Q. How could there have been oil saturated and running on one bag of the cargo and none of the other?

A. I don't know how that came out, but that bag came out of there saturated with oil. It was down with some other freight.

Q. It showed oil in that compartment?

A. There was oil in the compartment, yes.

Q. How much oil was there on the bottom? As I understand there was pipe in the bottom?

(Testimony of Charles Nelson Fulcher.)

A. Pipe in the bottom of the ship, and that bag of coffee got down in the bottom of the ship.

Q. Then there was oil floating around in all—

A. All over the bottom.

Q. And in among those pipes?            A. Yes, sir.

Q. What compartments is that true of?

A. I think it was No. 2 and No. 3.

Q. That was also true of 4 next to the oil tank, was it not?            A. Yes, sir.

Q. Two, three and four had this oil in the bottom?            A. 2, 3, and 4.

Q. What kind of oil was that, do you know?

A. Petroleum. I remember distinctly that one bag that came out of there, that was soaked with oil. I remember, but that had gotten down among the other cargo.

Q. You live in San Francisco, do you?

A. Yes, sir.

Q. What is your address?

A. 145 5th Avenue, or 214 Kohl Building.

Q. Now, was any of this coffee in 4 compartment, do you know?            A. I don't think so.

Q. All 2 and 3?

A. I think all the coffee was in 2 and 3.

Q. Was any coffee aft, in the after part of the ship?            A. No, I don't think so.

Q. There might have been, might there not?

A. No, I don't think so.

Q. Was there any coffee finally swept out of one of the holds?            A. What is that?

Q. Was not some of the coffee finally swept out

(Testimony of Charles Nelson Fulcher.)

of one of the holds; swept up and gathered up and discharged?

A. No, not to my recollection.

Redirect Examination.

Mr. KNIGHT.—Q. How did that coffee taste that you roasted? You roasted it, I think you said, and drank it? A. It didn't taste so bad.

Q. You detected some odor of a substance foreign to the coffee, I presume?

A. Yes, it was not extra good, I am very fond of good coffee.

Q. You are very fond of good coffee?

A. Yes.

Q. Was it palatable? A. Well, drinkable.

Q. About how much did you have in all of that sample?

A. I suppose about a pound and a half or two pounds. There was some question about it and I wanted to find out myself, and I took some home and I tried it myself out of curiosity.

Q. I understand that was taken from the Little Mail Dock.

Mr. OLIVER.—Mr. Cambron spoke of a sample that I gave him. Will you say where that came from, the bag that I gave him.

Mr. DENMAN.—Q. Did you see him give any bag in the first place? A. No, sir.

Q. Did you give Mr. Oliver any samples?

A. Yes, I gave him some samples, because, of course, we were naturally worried about the coffee, etc., and we wanted to find out as to that.

(Testimony of Charles Nelson Fulcher.)

Mr. KNIGHT.—Q. Who took the samples that you gave Mr. Oliver?     A. I did.

Q. Where did you take these samples from?

A. I took them indiscriminately from the bags upon the wharf.

Q. On the Little Mail Dock?

A. On the Little Mail Dock.

Q. Do you recall about how much there was in that sample that you gave Mr. Oliver?

A. I don't know, I suppose probably three or four pounds.

Q. When was it you gave those samples to Mr. Oliver?     A. I don't remember when it was.

Q. Can you say how long after the coffee had been discharged on the Little Mail Dock, if it was after the discharge of the coffee? Can you place the time by reference to the date of the discharge?

A. I say four or five days.

Q. Four or five days when?

A. After the discharge of the coffee; it might have been two or three days.

Q. Do you know whether or not the steamer had then gone over to Long Wharf or was she lying alongside the dock?

A. She was laying alongside yet. I gave Mr. Oliver that sample I think just about the same time that I took my own home.

Q. About four or five days after it was discharged?     A. Yes.

(Testimony of Charles Nelson Fulcher.)

Recross-examination.

Mr. DENMAN.—Q. What did you put these samples in?      A. In paper bags.

Q. You put about three or four pounds in Mr. Oliver's bag?

A. I think about three or four pounds, and I took about a pound and a half or two pounds home.

Q. Was it not about a pound and a half or two pounds that you put in Mr. Oliver's bag, about the same size as you took home?

A. No, more than that.

Q. A little more?

A. A little more than that; a larger bag.

Q. A larger bag than you had yourself?

A. Yes, sir.

Q. It was a paper bag?

A. Yes, a paper bag.

Q. Now, how did you get those samples for trial that you put into your bags?

A. I just opened the top of the sack.

Q. The top of the sack?

A. Yes, the top of the sack.

Q. How many sacks do you suppose you opened?

A. Four or five.

Q. Four or five sacks?      A. Yes.

Q. You made up these samples out of the four or five sacks?      A. Yes, sir.

Q. That is the only sample you gave Mr. Oliver, was it not?      A. Yes, sir.

[**Testimony of Walter D. Canney, for the Respondent.**]

WALTER D. CANNEY, called for the respondent, sworn.

Mr. KNIGHT.—Q. Mr. Canney, in what business were you engaged in the month of February and in fact during the time the “Santa Rita” was discharging her cargo of coffee in February, 1907?

A. Clerking on the ship.

Q. What were your duties in that respect, what did you do?

A. Well, I was checking and sorting out cargo, looking after the sorting until the time came for delivery.

Q. Did you check up at all or take any note of the cargo that was being delivered by the ship?

A. Yes, sir.

Q. And were familiar with the discharge of the ship, were you?      A. Yes, sir.

Q. She discharged coffee on this side of the Little Mail Dock and Steuart Street, didn't she?

A. Yes, sir.

Q. Can you state what consignments of coffee were discharged on the Little Mail Dock and what at the Steuart Street wharf?

A. No, I cannot, because I was there only a short time; I think they were just starting to make the deliveries when I went over to Long Wharf.

Q. Started to make the deliveries of coffee at the Little Mail Dock?      A. Yes, sir.

(Testimony of Walter D. Canney.)

Q. Were you there at the Steuart Street Wharf when the ship was discharging there?

A. Yes, sir.

Q. Did you note any coffee discharged at the Steuart Street Wharf?      A. Yes, sir.

Q. Now, while the *steamer discharging* did you take any samples of coffee at the Little Mail Dock?

A. Yes, sir.

Q. Of coffee that had been discharged from the ship?      A. Yes, sir.

Q. About how much did you take?

A. I couldn't say.

Q. Approximately?

A. Between the two docks I should judge it would be about two pounds; maybe two pounds and a half.

Q. How much of that approximately was taken from the coffee at the Little Mail Dock?

A. Maybe half.

Q. And were those samples taken indiscriminately from the sacks or any particular sacks picked out?

A. No, it was different places; some had come from the sacks, that is where the sacks had been torn and leaked out into the gutter.

Q. Did the sacks give any evidence of discoloration?      A. Yes, sir.

Q. Do you know how they were discolored, from the appearance of the sacks?

A. I should judge it would be from the sweat.

(Testimony of Walter D. Canney.)

Q. Did you see the test being made to determine whether or not the sacks were stained by salt water?

A. Yes, sir.

Q. You were there at that time?

A. Yes, sir.

Q. There is a recognized test for determining that?

A. A very good test; that is what they use it for.

Q. Did you see any sacks discolored by oil?

A. No, sir, I did not.

Q. Now, did you yourself examine that coffee at all, roast it or examine it yourself?

A. Yes, sir.

Q. What did you do with the samples that you took?

A. I took them home and roasted them it might have been a couple of months afterwards. I personally could drink it; of course, there was a slight taste of it.

Q. A slight taste to the coffee, you say?

A. Yes, the fumes of the oil, I suppose it was.

Q. Was it noticeable to the sense of smell?

A. Yes, sir.

Q. How appreciable was it, how noticeable was it? Was it very strong or not at the time you roasted it?

A. Well, it was strong enough that anybody could tell it.

Q. How did it taste?

A. Well, it had an off taste to it. Not enough to ruin it altogether.



(Testimony of Walter D. Canney.)

Q. Was it coffee that you might say was drinkable?      A. Yes, sir.

Q. As coffee?      A. Yes, sir.

Q. Do you say the same of the samples you took on the Steuart street wharf as at the Little Mail Dock?      A. They were mixed together.

Q. Did you notice whether any of the coffee that was located on the Steuart Street Wharf was mouldy?      A. Do you mean the coffee itself?

Q. The coffee itself.      A. Yes.

Q. Are you able to state approximately how much of this coffee was affected in that way?

A. No, I couldn't say.

Q. Was any of the coffee that was discharged on the Little Mail Dock mouldy?

A. That I couldn't say, because I was not there and didn't notice.

Q. Did you notice any deliveries made on that wharf?      A. Not at the Little Mail Dock.

Q. Are you able to state from your observation of the Leege & Haskins shipment or the Brandenstein shipment in what relative condition those coffees were?

A. Well, I could not tell you.

Q. You would not be able to state?

A. No, sir.

Q. You noticed the leakage from the bags, did you?      A. Yes, sir.

Q. What did that appear to be due to?

A. It comes from the handling.

(Testimony of Walter D. Canney.)

Q. How about the sacks themselves; in what condition was the sacking?

A. Well, it was not exactly what I would call up to the standard; they were not up to the regular coffee sacking, what I call a regular coffee sack, made extra strong.

Q. Those sacks were not up to that standard?

A. No, sir, they were not up to that standard.

Q. Let me ask you, for how long have you been handling coffee shipments in this way, that is checking up and assisting in discharging the coffee at this port?      A. At this port?

Q. Yes, or elsewhere on this coast?

A. Well, I was with the Mail Company for about seven years.

Q. Engaged in similar duties?

A. Yes, sir.

Q. Handling coffee in this way?

A. Handling coffee in the same way, yes.

Cross-examination.

Mr. DENMAN.—Q. You were the discharging clerk, were you, on the “Santa Rita”?

A. Yes, sir.

Q. Are you regularly employed by the Union Oil Company or the United Steamship Company?

A. No, sir. Do you mean being regularly in their employ?

Q. Yes.      A. No, sir.

Q. Are you employed from time to time to discharge ships by Mr. Jerome?

A. That is the first time.

(Testimony of Walter D. Canney.)

Q. Now, you were on the "Santa Rita" on Long Wharf, were you?      A. Yes, sir.

Q. Do you remember testifying in another case over there?      A. Yes.

Q. As I understand it, you saw the coffee discharged at Steuart Street dock, is that it?

A. At both docks.

Q. At both docks?      A. Yes, sir.

Q. Did you see the entire discharge at Little Mail Dock?

A. Yes, whatever left the ship at the Little Mail Dock I saw. What I meant was I was not there at any of the deliveries.

Mr. KNIGHT.—Q. You mean delivery to the consignees?      A. Yes, sir.

Mr. DENMAN.—Q. You say you took up this coffee, which you put into these bags, from the wharf?      A. Yes.

Q. Where it had fallen from the torn sacks?

A. Yes, sir.

Q. Was there much of that?

A. Do you mean much of the coffee that I took?

Q. Much of the coffee that was in this torn condition, in the torn sacks?

A. You cannot tell because there is always more or less sacks torn in a cargo of coffee.

Q. But you made up a bag of this yourself and a bag for Mr. Oliver?

A. No, sir, just for myself.

Q. Just for yourself?      A. Yes, sir.

(Testimony of Walter D. Canney.)

Q. That was the coffee that you subsequently took home?      A. Yes.

Q. Which had this queer taste in it, but you could drink it without being sick?

A. Yes, sir.

Q. You did not make any other sample of the coffee?      A. No, sir.

Q. You were present when these tests were made to see whether it was salt or fresh-water stain?

A. Yes, sir.

Q. By the way, did you see what the water bottoms of this vessel were filled with?

A. What is that?

Q. Did you see what the water bottoms in the "Santa Rita" were filled with?      A. No, sir.

Q. As a matter of fact, you know they were filled with fresh water, don't you?

A. That I could not say; I did not see them at all.

Q. You remember that testimony, that there was?

A. Yes, I remember it.

Mr. KNIGHT.—We object to anything of the character or hearsay that the witness might know from the testimony given by others.

Mr. DENMAN.—Q. Did you see this oil-soaked sack that came out?      A. No, sir, I did not.

Q. You were not there all the time?

A. I did not go back to the little Mail Dock after I went to Long Wharf.

Q. There was a good deal of coffee discharged at the Mail Dock after that?

(Testimony of Walter D. Canney.)

A. No more discharged at the Mail Dock after Long Wharf; the rest of it was discharged at Stuart Street.

Q. Where was the coffee that was finally scraped together and shoveled out of the vessel—where was that taken off?

A. I don't know, I did not see any at all.

Q. You would not be able to say whether there was or was not such coffee?

A. No, sir, I would not know, because I did not see any.

**[Testimony of F. B. Oliver, for the Respondent.]**

F. B. OLIVER, called for the respondent, sworn.

Mr. KNIGHT.—Q. Will you state whether or not you are connected with the Union Oil Company and have been during the year 1907?

A. I was.

Q. In what capacity?

A. I was supposed to be superintendent of their steamers.

Q. As such will you state whether or not you had general supervision respecting the discharge of the cargo of the "Santa Rita"? A. I did.

Q. And the coffee that is involved in this case was discharged when, if you know, Mr. Oliver?

A. On the 30th and 31st of January, 1907.

Q. Do you know when that coffee was taken away by the consignee? A. The following week.

Q. Do you know the day of the week?

A. No, I could not say, because it was there for a long time, on the Little Mail Dock, and the Chief

(Testimony of F. B. Oliver.)

Warfinger had notified me several times that unless it was taken away that he would put it into the unclaimed warehouse, and I called the consignees up several times, asking them to go and pay the freight and take it away. Now then, they did not come until the 5th of February.

Q. You spoke of a long time. What do you mean by the *express* "a long time"? A. A week.

Q. When was the freight paid, do you remember?

A. The freight was paid on the 5th.

Q. On the 5th of February?

A. Fifth of February, both of them, Leege & Haskins and Schilling.

Q. Mr. Oliver, did you receive a sample of coffee from Mr. Fulcher who has just testified?

A. I did and I did not. The coffee was let for me at the office of the Michigan Steamship Company on Steuart street. I did not know anything about it until the following week. Mr. Hunt, who was the freight clerk in charge of these cargoes, who is now dead, took that, thinking I might want it. When I found out this coffee was sold without any notification, I went to Mr. Hunt and I said, "Get me a sample of that coffee just as quick as you can, provided it has not left town." He said have you got that sample, I did get for you? I told him I did not know anything about it. Then he told me of the sample he had left at 23 Steuart Street. I went down and found that bag of coffee, which I took to Mr. Cambron, and asked his opinion, and told him that coffee had been sold without any effort being

(Testimony of F. B. Oliver.)

made to obtain our opinion on the thing or to appraise its damage.

Q. What time was it that you had this first talk with Mr. Cambron?

A. That was along about the 16th of February.

Q. And you gave the sample to Mr. Cambron?

A. Yes, sir.

Q. That is all you know about that?

A. That is all I know about that.

Q. When was the first time that any complaint was made to the claimant regarding this Legee & Haskins office?

A. Absolutely nothing from Messrs. Leege & Haskins at any time.

Q. That is prior to the filing of the libel?

A. No, sir.

Q. You were first advised by the filing of the libel?

A. I know of it by the receipt of these letters, and on these letters I acted.

Q. Then the first time that you received notice of any complaint was from Schilling & Company?

A. Yes, sir.

Q. Dated the 13th of February, 1907?

A. I received it the next day; it was a registered letter.

Mr. KNIGHT.—We offer that in evidence merely for the purpose of fixing the time regarding that particular complaint.

(The paper is marked "Claimant's Exhibit 1.")

(Testimony of F. B. Oliver.)

Q. Did you receive any letter from Leege & Haskins or anyone representing Leege & Haskins respecting this coffee?      A. No, sir.

Q. The coffee in suit here I mean?

A. No, sir.

Q. When did you learn for the first time that this Leege & Haskins coffee had been sold?

A. At that time when I went over to Mr. Alexander, who represented the Schilling coffee.

Q. I want to know the dates. You learned on or about the 13th of February?      A. The 14th.

Q. The 14th, that this coffee had been sold?

A. Yes, sir.

Q. Then you were not asked at all to assist in securing any purchaser for this coffee?

A. No, sir, I knew absolutely nothing of it.

Q. Did all this Leege & Haskins and Schilling coffee come out of the ship at the Little Mail Dock?

A. It did, every cent of it.

Q. Of what did the Leege & Haskins consignment consist, what kind of coffee?

A. The man who paid the freight to me told me it was all Santos coffee.

Q. How about the Schilling Company?

A. The Schilling Company, Mr. Volkman's brother, told me that was Mexican.

Q. How much of the Brandenstein coffee came out on the Little Mail Dock?

A. About one-half.

Q. The balance from Steuart Street?

A. Yes, sir.



(Testimony of F. B. Oliver.)

Q. And that came out of hold No. 3?

A. Yes, sir.

Q. The Brandenstein coffee came from No. 3?

A. Part of it.

Q. At the Steuart Street Wharf?

A. At the Steuart Street Wharf.

Q. Where did the coffee come from that was discharged at the Little Mail Dock?

A. Two and a part of 3.

Q. Did you also at the time of learning of the sale of the Leege & Huskins coffee learn of the sale of the Schilling coffee?

A. I did. I learned of the Schilling coffee first, and then was told at the same time that the Leege & Huskins coffee had been sold at the same time.

Q. Were you given any opportunity to assist in securing a buyer for the Schilling coffee, either?

A. No, sir.

Q. Now, Mr. Oliver you have been in the coffee business yourself?      A. Yes, sir.

Q. And for how many years?

A. Seven or eight; a direct importer from Mexico and Central America.

Q. Are you familiar with the different kinds and grades of coffee?      A. Yes, sir.

Q. Were you familiar with the condition of the coffee market during the year 1907?

A. Not specially, except upon inquiry. When this coffee came in I made some inquiry as to what the market was.

(Testimony of F. B. Oliver.)

Q. Did you take any part in the sale of this coffee to Mr. Cambron?

A. I did. That was the Brandenstein coffee.

Q. What coffee was sold to him?

A. All of the Brandenstein, the Bogota and the Santos.

Q. What would you say respecting the tendency of coffee, if exposed, coffee that has been subject to damage such as this Leege & Haskins coffee was, to lose the foreign odors or fumes with which it might become more or less impregnated?

A. As a rule, it never would.

Q. Would it make any difference, as far as the odor of coffee is discernible, to keep that coffee in a bottle that was kept tightly corked, or on the other hand, if it was kept in any vessel or package that might be more or less subject to the air?

A. Yes, sir.

Q. That is, in the former instance, it would retain its odor far more?

A. Yes, sir, it would retain its odor naturally.

Q. Did you notice whether or not any of the coffee on the Little Mail Dock was mouldy?

A. There was some of it from the sweating, moisture; not to any great extent. There were some sacks that showed on the sacks on the outside a slight mould from the moisture that had gathered there.

Q. Due to sweating?

A. Due to sweating. That was the reason the ship was put in there. The captain was afraid the cargo was heating, otherwise he would have gone to

(Testimony of F. B. Oliver.)

Long Wharf, Oakland, and discharged his carbide first.

Q. So that he put into the Little Mail Dock because he feared his cargo was heating?

A. Yes, sir.

Q. And discharge this coffee?

A. Yes, sir, and a great deal of the canned goods that were in 2 and 3.

Q. What was the condition of the coffee, as far as any mould on it at the Steuart Street Wharf?

A. That was very much worse. The Brandenstein coffee was put into the ship first, and that down right against some case goods in No. 3, and that had the weight of the other cargo on it.

Q. Therefore it was not in as good condition?

A. Therefore it was not in as good condition.

Q. Do you know how the market ranged generally and what its condition was from the month of February for the next six or eight months?

A. No, sir, I did not keep track of it after that was sold, and I did not know what disposition was going to be made of the Brandenstein coffee.

Q. What did you notice respecting the outward indications, the stain of the coffee that was discharged at the Little Mail Dock?

A. A jute bag taking moisture will always show stain.

Q. That coffee gave indication of stain?

A. A great many of the sacks were stained from moisture.

Q. Do you know from what moisture?

(Testimony of F. B. Oliver.)

A. No, sir, other than the moisture contained in the cargo itself. All cargo in ships, as a rule, when confined any length of time, sweats.

Q. Was there any indication of stain from oil?

A. No, sir, none whatever.

Q. Or from salt water?

A. No, sir, I had a test made of the Brandenstein coffee for salt water, by the nitrate of silver test.

Mr. DENMAN.—Q. When was the one that was referred to a little while ago here taken?

A. That was taken down on the Little Mail Dock. They did not know possibly but that the ship had leaked.

Mr. KNIGHT.—Q. Do you know when this coffee was received and paid for by the consignees?

A. I gave the order on the 5th of February.

Q. Do you know whether it was received and paid for at that time?

A. They paid me and I gave them the delivery order. It was theirs at that time.

Q. Did anyone represent the claimant or the ship, as far as you know, or the charterer of the ship, when this Leege & Haskins coffee was sampled and sold? Was the ship represented at all in taking samples by Leege & Haskins?

A. No, sir; even those men that were here did not know the sampling that had been done.

Q. Do you know a man named Kopitz?

A. No, sir.

(Testimony of F. B. Oliver.)

Q. Do you know whether any man named Kopitz represented the ship at that time?

A. No, sir, there was no one of that name at all.

Q. Did you notice any leakage from the bags?

A. A great many of them were broken.

Q. How was that caused?

A. The bags were too light for the shipment of the coffee. It was an ordinary burlap bag.

Q. What kind of bag is coffee usually shipped in?

A. In a heavy twill bag, 2½ pound bag.

Q. What was the freight rate on that shipment?

A. Forty cents a hundred.

Q. You have the bill of lading there?

A. Yes, sir.

Q. And that coffee was shipped in October of 1906?

A. It was received on the 16th of October at the Bush terminal in New York—no, received on the 18th of October, 1907, the Brandenstein, the Leege & Haskins and the Schilling coffee.

Q. Do you know Mr. C. G. Cambron?

A. I do.

Q. Do you know to what extent he has been engaged in the coffee business?

A. I have known him for the last 12 or 14 years as a coffee broker personally.

Q. How does he stand in the trade here?

A. Very well, indeed; very high.

Q. Do you know to what extent his business compares with that of other coffee brokers?

(Testimony of F. B. Oliver.)

A. It is not as large as C. E. Bickford. He fell heir to the old Hockoffler trade. Mr. Hockoffler was the pioneer broker here.

Q. That was a well-established business?

A. That was a well-established business.

Cross-examination.

Mr. DENMAN.—Q. Have you a statement of the deliveries that were made by the company?

A. I have, in the delivery book; there it is (handing).

Q. I see here at page 41 a series of items headed "Received in good order from the Union Steamship Company on the day below stated the respective packages set against our respective names subject only to exceptions noted." What does this page 41 contain?

A. All of the Leege & Haskins coffee.

Q. I notice the number of bags total up 1081 bags? A. Yes, sir.

Q. There are only 1067 bags that were consigned to Leege & Haskins.

A. That was because of the leakage of the bags and the breaking of the bags, and they took other bags and filled them up.

Q. So that the total weight delivered was practically the same? A. Yes, sir.

Q. That weight amounted to 152,764 pounds?

A. The Leege & Haskins weight given here is 138,710.

Mr. KNIGHT.—Q. How much was delivered?

(Testimony of F. B. Oliver.)

A. 1067 bags of coffee; the weight given is 138,710.

Q. How much do the books show were delivered?

A. It does not show in weight, only in the number of sacks.

Mr. DENMAN.—Q. I understand that you delivered 1081 sacks to make up the difference in weight. What weight?

A. No, sir. That coffee was identified as Leege & Haskins', coming out of their bags as marked. As they did not have that sized bag, they would take any bag and would fill it up with the coffee that belonged to Leege & Haskins.

Q. Without the additional bags you had 1055 bags, and then the additional between 1055 and 1067 is contained in these 33 extra bags; is that correct?

A. Yes, sir.

Q. Now do you know what the actual weight of that coffee was? A. No, sir.

Q. What negotiations did you have with Mr. Bickford regarding it? A. None whatever.

Q. I understand he made a claim on you for what? A. All of the sweepings.

Q. How much did he claim at that time?

A. All of the sweepings.

Q. How much was the claim?

A. He was billed by the Canton Insurance Company for that coffee with 151,236 pounds.

Q. What did he claim from you further?

A. And he claimed all of the sweepings.

Q. How many pounds?

(Testimony of F. B. Oliver.)

A. He has 1528 pounds short here. He did not claim this from me. He demanded of me all of the sweepings which I refused to give him, telling him it would be apportioned when the cargo was cleared up.

Q. What did you ultimately deliver to him?

A. 32 bags; 22 at one time, and 9 at another.

Q. Is that the 32 that you are referring to here?

A. Probably it was.

Q. Do you know what the actual weight of the cargo was?

A. Only so far as the bill of lading gives me. He paid freight \$554.84. That was 40 cents on 138,710 pounds.

Q. But you do not know the actual weight of the coffee?

A. No, sir, I have no way of telling that. The coffee was taken away.

Q. Do you recollect our coming to an agreement to these figures?

A. We agreed on that, I think.

Q. That the weight of the coffee was 152,764 pounds?

A. According to the bill

MR. KNIGHT.—Q. As delivered?

A. No, sir, as originally invoiced, I think I have got that somewhere myself.

MR. DENMAN.—Q. Is there any question, Mr. Oliver, about the original invoice weights?

A. Of course, I do not think there could be anything about the original invoice, that is Arbuckle's original bill, but as you and I discussed it, you were



(Testimony of F. B. Oliver.)

willing to pay the difference in freight. We agreed on that at that time,—you agreed to pay the difference in freight on that thing in that adjustment that we tried to arrive at, and I accepted it, that it had been understated in the bill of lading.

Mr. DENMAN.—The understanding between Mr. Oliver and myself is that the invoice weights, 152,764 pounds, control and that we are to pay the difference in the freight.

The WITNESS.—That was the agreement that I had with you last May, if that holds.

#### Redirect Examination.

Mr. KNIGHT.—Q. The libel set forth a delivery by libelant to the steamer of 1067 bags of Santos coffee, weighing 152,764 pounds to be delivered, etc., and the answer admits a delivery of 1067 bags of green coffee weighing 138,710 pounds and no more. Now I understand you to say, Mr. Oliver, that the amount received by the steamer was not as per the bill of lading? A. No, sir, it was not.

Q. That that bill of lading is incorrect and has understated the number of pounds of coffee actually received by the ship consigned to Leege & Haskins?

A. It must be, if that is the bill they paid.

Q. Have you been presented with the bill?

A. No, sir, only as Mr. Denman showed it to me last May.

Q. Then Mr. Denman has shown you a bill which Leege & Haskins paid Arbuckle?

A. Yes, sir.

Q. Calling for a total weight of 152,764 pounds?

(Testimony of F. B. Oliver.)

A. Yes, sir.

Q. That is the weighers' statement?

A. I don't know what that is.

Mr. DENMAN.—I gave you the weighers' statement.

Mr. KNIGHT.—Q. I want to get at on what basis you made the statement that the weight shown by the invoice that Mr. Denman has produced and shown you is correct rather than the amount set forth in the bill of lading?

A. The invoice is right.

Q. And you took the invoice?

A. I will admit that the invoice is right.

Q. Rather than the ship's bill of lading?

A. Yes, sir, I would.

Q. If that is the fact, all right?

A. The only thing I have to go by is my bill of lading; I spoke to you and Mr. Page about it.

Q. I do not remember the conversation. Whatever the fact is and you are convinced that is the amount, well and good. I only want to get at the basis of your statement.

A. I do not think Leege & Haskins would pay for seven tons of coffee if it was not shipped.

Q. You make the admission on a weighers' list shown you?

A. As I remember it, he showed me a little pencil memorandum. (Addressing Mr. Denman.) Did you show me a weighers' list?

Mr. DENMAN.—Yes, and this one too. There was another list.

(Testimony of F. B. Oliver.)

Mr. KNIGHT.—Q. I only want to see on what you discredit your own bill of lading.

A. I think it was that bill there.

Q. Where did they get their estimate from?

A. That I cannot tell you. I did that last May for the purpose of arriving at a settlement.

Q. You wish to have it admitted as a fact here?

A. I will leave that to you.

Q. I do not want to quibble on what is a fact. I want to get at the truth.

A. I don't know whether that is a fact or this is a fact.

Q. All I know is from the bill of lading which you turned over to me. If you believe the bill of lading therefore is wrong and this is right, it is up to you.

A. This is practically 130 pounds to the bag. This 138,000 is 130 pounds to the bag.

Q. Whereas the large weight, 152,764 averages 140 pounds to the bag?

A. Yes, sir, that is a very heavy bag. That is a great deal heavier than the Brandenstein coffee was. That only went a little over 133 pounds. I attributed that to the fact that half of that coffee was Bogota.

Q. Do you know how the Santos coffee of the Brandenstein shipment averaged up?

A. No, sir.

Q. Do you know how the Schilling coffee averaged up?

(Testimony of F. B. Oliver.)

A. That was 65,000 pounds. There were 500 bags. That would be 130 pounds to the bag.

Q. Would that at 130 pounds, multiplied by 1067 equal 138,710?

A. Yes, sir, practically. This goes at 131 pounds.

Q. What does?

A. The Brandenstein coffee. I think that was the reason I did it. I think I went over that question before, and I spoke to either you or Mr. Page about it at the time, last May, what we would have to do in that.

Q. I do not recall that.

A. Then I am certain that I figured these up at the time to see how they did go, and I think there was a difference in that Schilling coffee too.

Mr. DENMAN.—Very likely there was.

The WITNESS.—I think that Schilling coffee came 10,000 short.

Mr. DENMAN.—Q. That is to say a shortage between the bill of lading weight—

A. And the invoice weight.

Mr. KNIGHT.—Q. The invoice weight was 10,000 pounds more than the bill of lading weight?

A. Yes, sir. The Brandenstein New York invoice called for 100,856 pounds. The bill of lading called for 97,804. That only went a little over 133 pounds to the bag.

Q. Under the invoice weight?

A. Yes, sir.

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(Testimony of F. B. Oliver.)

Recross-examination.

Mr. DENMAN.—Q. Evidently it was taken at 130 pounds by the ship?

A. It figures out 131 pounds, a little over. That was the reason that I agreed to that last May.

Q. You remember our discussion as to a shortage of 19 bags, of 141 pounds each, amounting to 2679, which at that time we thought was a total loss?

A. I did have that for a long time. I am under the impression that I have got it yet. I did have it, but I have forgotten what I did with it.

Q. The fact was, Mr. Oliver, was it not, that there was a certain amount of coffee, a certain number of bags amounting to something like 1051 or 1052 pounds that were delivered in bags and subsequently you gathered together a lot of sweepings that had been in other bags shipped in this shipment, and delivered those to Mr. Bickford?

A. To Mr. Lewin.

Q. And you do not recollect at the present moment how many bags those were, but your recollection is around 18 or 19?      A. 31.

Q. You could get the weight of that?

A. Yes, sir.

Mr. KNIGHT.—Q. Who was Lewin?

A. The purchaser of this coffee.

Q. The Leege & Haskins coffee?

A. Yes, sir.

Mr. DENMAN.—Q. Lewin told you he was the purchaser of the coffee?

(Testimony of F. B. Oliver.)

A. He came and claimed it with the warehousemen. He came and claimed it with the warehousemen. He came to me and demanded all of the sweepings.

Mr. KNIGHT.—Q. Did he claim he paid for it?

A. Yes, sir.

Q. Did he give you the figure he paid for it?

A. No, sir, not at that time.

Q. Did he afterwards give you the figure he paid for it? A. He gave that to me to-day.

Q. Have you got that with you?

A. Yes, sir,  $5\frac{1}{2}$  cents he paid for it, less 2 per cent for cash.

Q. What does he say he sold it for?

A.  $6\frac{3}{4}$  cents.

Mr. DENMAN.—Q. After reconditioning?

A. Yes, sir.

Q. What did he say his profit was for handling and reconditioning it?

A. He said, to the best of my recollection, he made a net profit of from  $\frac{3}{8}$  to  $\frac{1}{2}$  cent a pound.

Mr. KNIGHT.—Q. Did you calculate that thing up?

A. Yes, sir; he made more than that. His expense of reconditioning that was a little over a half a cent.

Mr. DENMAN.—Q. You do not know that of your own knowledge? A. Yes, sir.

Q. You did not see him spend it?

A. I know the bills he paid.

Q. You did not see him pay them?

(Testimony of F. B. Oliver.)

A. I saw one bill he did pay.

Q. Did you see him pay that yourself?

A. No, sir, but they said they got it from him.

Q. That is all you know about it?

A. The Hazlett Warehouse said they paid them.

Q. That is all you know about it?

A. I did not see him pay the money.

(An adjournment was here taken until Thursday, December 31st, 1908, at 12 M.)

Thursday, December 31st, 1908.

F. B. OLIVER, recalled, cross-examination resumed.

Mr. DENMAN.—Q. Mr. Oliver, I hold in my hand a piece of brown paper with the words “Lewin” on it and some figures thereafter. Are those the figures given to you by Mr. Lewin?

A. They were and were not. He gave me the bill and I got it from the bill; they came from the insurance company to him.

Q. He got the bill from the insurance company?

A. The Canton Insurance Company rendered him a bill for the purchase of the coffee, and these were the figures that were on the bill.

Mr. KNIGHT.—Q. What do those figures represent?

A. The gross weight of the coffee, the deductions, and some charges on prices at which it was sold, and some charges which I question.

Mr. DENMAN.—We will offer this in evidence and ask to have it marked “Libelant’s Exhibit 3.”

(The paper is marked “Libelant’s Exhibit 3.”)

(Testimony of F. B. Oliver.)

Q. It is understood that you will give me the number of pounds delivered to Lewin?

A. Yes. In September or the first of October I did not know to whom to make the delivery, and I went to him and I think I went to O'Brien, I won't be certain of that; but Lewin told me at that time that they belonged to him, and he asked me to put it in the warehouse for his account, which I did; he designated the warehouse to me in which I should put them, and I gave them some of it that belonged to the Brandenstein account, and I delivered this to Cambron as a part of their coffee, being their proportion.

Q. Have you that delivery-book here?

A. The one that I had last night?

Q. Yes. A. Yes.

Q. Mr. Oliver, I notice that this delivery-book shows that on February 7, 440 sacks were delivered, and on February 8, 560, and that the balance of the deliveries were on the 9th, 15th and 27th of February. That is correct, is it?

A. Oh, yes, that is right.

Mr. KNIGHT.—Q. That is the Brandenstein delivery? A. No, this is the Leege & Haskins.

Q. Delivered by the ship? A. Yes.

Mr. DENMAN.—Q. By the ship from the dock to the expressmen as they came along.

A. One thing there is here; you have got these sweepings down. Are those signed for? I was thinking of those sweepings last night.

Q. It says "Whaley."



(Testimony of F. B. Oliver.)

A. That is right. He took them; his draymen, and there is the number of them.

Q. He took the one stained with oil, the one sack?

A. He took that one sack.

Q. They have got sweepings on the 9th.

A. That came off the Little Mail Dock.

Q. And went to H. S. Searl; he was the man that signed for all the others. A. That is right.

Q. Then on the 27, 9 and 16?

A. Nobody signs against those, do they?

Q. Nobody signs them but against those is the name of Kuhn. A. He took them then.

Q. Who is Kuhn?

A. He is a drayman; there is the number of the dray there.

Q. Whose drayman is he?

A. The warehouse.

Q. He took those to the warehouse?

A. Yes.

Q. These sweepings then, those last two items—these last four items of sweepings—

A. Only those that are crossed. Those two that are crossed there are sweepings. There is one stained with oil; is that one stained with oil marked “Whaley”?

Q. Yes. A. Whaley took that.

Q. There is an item the fourth from the bottom, seven sacks of coffee sweepings received by H. S. Searl. A. Searl took that.

Q. Did Searl take that off the ship or did Leege & Haskins? A. Leege & Haskins.

(Testimony of F. B. Oliver.)

Q. Then the next item the one stained with oil, Whaley.

A. Yes, that went into the California Warehouse.

Q. Then 9, Kuhn. A. That is right.

Q. That went into the warehouse?

A. The Humboldt Warehouse.

Q. And 16 sweepings, Kuhn?

A. That went into the Humboldt Warehouse.

Q. That was the stuff that was subsequently delivered?

A. No, additional; that that I gave him was additional.

Q. Then in addition to these 9, 16 and 7 parcels here of sacks, the sweepings were delivered later on in September?

A. They were in September, I could not give you the date exactly, but I have a memorandum that I had the waste sent up to him on a truck. At any rate I can go to the warehouse and get that. They were small bags, grain bags, the only thing I could get, 22 or 23.

Q. How much would they amount to?

A. They amounted to between 90 and 100 pounds.

Q. How many of them were there?

A. 31, 22 at one time and 9 at another, that being their proportion, as to the number of sacks. Of course, you must remember all I had to go by was my bill of lading, and at that time I asked Leege & Haskins to give me the weights or bills and other information I wanted and they would not give me any. As to the actual weight I knew nothing outside of that bill.

(Testimony of F. B. Oliver.)

Further Redirect Examination.

Mr. KNIGHT.—Q. Mr. Oliver, with reference to this memorandum headed “Lewen 9½,” which has been offered in evidence on behalf of the libelant, and which seems to contain some letters and figures which are not self-explanatory; can you state or interpret, so to speak, that memorandum?

A. Yes; “Lewen 9½”; that was the cost of the coffee.

Q. What do you mean by 9½; cost to whom?

A. That was the cost to Leege & Haskins, the original cost.

Q. In New York? A. In New York.

Q. Now will you explain the rest?

A. 151,236 at 5¼ cents less 2 per cent; that was what he bought and paid for.

The COMMISSIONER.—Q. That is Mr Lewen?

A. Mr. Lewen.

Mr. KNIGHT.—Q. This is Leege & Haskins?

A. This is Leege & Haskins. This is 1,528 pounds short; this added to the above amount make 152,674 pounds, which I am told is the total invoice as rendered by Arbuckle Brothers.

Q. Are those invoices in existence?

A. Mr. Denman had them.

Mr. DENMAN.—They were the basis of our agreement last spring.

The WITNESS.—This is the freight, \$558.29. Now let me see whether that is or not.

Mr. KNIGHT.—Q. All I want is an interpretation of the paper.

(Testimony of F. B. Oliver.)

A. The freight is \$558.29. He has got expense \$70. Then to all of that was plus 10 per cent.

Q. Plus 10 per cent; what does that represent?

A. I don't know.

Q. He did not state what that represented?

A. He said that was always on the bills. I told him "don't say it is always on the bills; I have received a great many of them, and it don't mean anything to me.

Q. But it appears in that statement as an additional charge?

A. Yes. The total charge was \$16,495.28.

Q. Now, you said in your cross-examination that you had had some negotiations with Mr. Denman respecting this shipment, and during those negotiations you had accepted as correct a statement of weight as shown by certain invoices in his possession; is that correct? A. Yes; that was last May.

Q. Which invoices showed a somewhat greater weight than the bill of lading?

A. Than the bill of lading. I will say here that I accepted these in consideration of being allowed the additional freight.

Q. That additional freight has not been received?

A. No, sir.

Q. Now, do I understand that that was reached in the course of negotiations looking to a compromise of the claim? A. Yes, sir.

Q. Was that compromise ever affected?

A. No, sir.

Mr. KNIGHT.—I shall move to strike out all the

(Testimony of F. B. Oliver.)

evidence on that subject, inasmuch as it appears that whatever admission was made by Mr. Oliver or whatever basis he may have accepted as the true weight of the shipment was during the course of negotiations for a compromise which was never consummated.

Q. I do not want to have it appear that we are taking any technical position, if by so doing we are in any way preventing the bringing out of the facts respecting the total amount of these shipments in pounds, and I will therefore ask you, Mr. Oliver, irrespective of any negotiations you may have had with Mr. Denman during the attempts made to compromise this claim, whether or not you are satisfied and you feel that you can with fairness admit that the invoice weights as presented by Mr. Denman are correct rather than the weights set forth in the bill of lading? And I will say this further that, if you do not feel that you can do so now, but that you can after you make a little investigation—you can easily determine that—I am willing, with the consent of the other side, to have you give the number, and I suggest that the taking of further evidence be continued until it can be determined whether or not the claimant can stipulate as to the total amount of pounds in this shipment, and we will endeavor to inform ourselves sufficiently so as to be able to stipulate to that, or whether we cannot.

The WITNESS.—I will endeavor to get that.

(An adjournment was here taken until Tuesday, January 5th, 1909, at 2:30 P. M.)

(Testimony of F. B. Oliver.)

Tuesday, January 5th, 1909.

F. B. OLIVER, recalled.

Mr. KNIGHT.—Q. Mr. Oliver, at the close of the testimony the other day the question arose respecting the true weight of that Leege & Haskins coffee, and I believe you were to satisfy yourself as to whether or not you could admit that the weight was other than that contained in the bill of lading?

A. Yes, I am satisfied that the bill is the correct weight.

Q. Now, let us get that into the record.

A. 152,764 pounds.

Q. You are satisfied that that was the weight of the coffee that was delivered to the steamer at New York for shipment to San Francisco?

A. Yes, sir.

Q. To complete your admission in that respect, have you calculated what would be the difference in the freight that I understood you to say was to be paid, or which would be the same thing, deducted from any finding of damage?

A. That could be very easily ascertained, the difference between the bill of lading and this.

Q. Can you make that?

A. Yes. Now, the bill of lading calls for 138,710; the difference between them is 14,054 pounds; now that is at 40 cents a hundred pounds; the difference in freight would then be \$56.22.

Q. Fifty-six dollars and twenty-two cents.

A. Yes. And then there are state tolls; that is at 5 cents a ton or any fraction thereof, and that

(Testimony of F. B. Oliver.)

would be 35 cents. Adding those together, it would make \$56.57.

Q. That would be all that would be collected by the ship? A. Yes.

Q. You were familiar with the Leege & Haskins coffee, the Schilling coffee and the Brandenstein coffee, were you not, as it was inspected and the consignments were delivered by the ship?

A. Yes, sir.

Q. Will you state what was the relative condition of the Leege & Haskins coffee and the Brandenstein coffee?

A. All of the coffee which came out on the Little Mail Dock, and which included about one-half of the Brandenstein coffee, all of the Schilling and all of the Leege & Haskins, barring the stained bags which arose from sweating, barring the odor of the thing, of course, was in very good condition.

Q. How about the coffee delivered at Steuart Street?

A. The Brandenstein coffee, that was down below a good deal of freight, and it got very warm down there and it sweated, and any quantity of that was mouldy. Bissell called my attention to it at the Humboldt warehouse, acting for the Hazelet Warehouse, and he did not know what he was going to do with it; that was in very poor condition; that was the coffee which was problematical, what it was worth.

Q. That was coffee delivered at Steuart Street?

A. That was the Bogota coffee.

(Testimony of F. B. Oliver.)

Q. That was situated—

A. That was right down on top of the pipe.

Mr. DENMAN.—Q. How do you know it was down on top of the pipe?

A. I saw it when it came out.

Q. What hold was that in?

A. No. 3. No. 2 was emptied completed at the Mail Dock, and part of No. 3. That was the reason for taking the steamer in from the stream, the captain was afraid the cargo was heating, and he wanted to stop it, and the best we could do was the Little Mail Dock. We wanted a long covered dock so that the ship could get in.

Q. Why was that so much worse down in the bottom of 3 than in 2?

A. Why, because there was canned goods there in No. 2 and this coffee was on top of that. Then they commenced in No. 3—

Q. What difference is it whether it is high up or low down?

A. It makes a great deal of difference, having the enormous pressure on it that there was.

Q. What difference does the pressure make?

A. In the heating; it is more confined.

Q. More confined? A. Yes.

Q. Was there just as much oil in 2 as there was in 3? A. No.

Q. More oil in 3 than there was in 2?

A. Yes, that is closer to the oil, and the oil to get in 2 would practically have to run up hill.

Q. How deep was the oil in 3?



(Testimony of F. B. Oliver.)

A. I saw very little myself.

Q. How deep was it?

A. I could not really tell you. I did not go down to measure it. It was all around the pipes in some of the places, in others not; none of the pipes were submerged down in No. 3.

Q. But there was enough that when she was on an even keel it was up on the pipes?

A. I suppose it would be up on the pipes.

Q. If she listed over to one side or another that would make quite a depth of oil?

A. Yes, it would.

Q. What was that—fuel oil?

A. I presume it was.

Q. Of a light brown color?

A. Well, it was pretty dirty. I could not tell you what color it was.

Q. Now, do you remember testifying that you received a paper bag containing a couple of pounds of coffee?      A. Yes, sir.

Q. That was the only coffee that you received out of this consignment?      A. Yes, sir.

Q. Did you ever have that tested?

A. I gave it to Cambron.

Q. That is all you know about it?

A. That is all I know about it. That was after the coffee was sold.

Mr. KNIGHT.—Q. After what coffee was sold?

A. The Leege & Haskins and Schilling.

Mr. DENMAN.—Q. So you don't know anything about the relative values of the two coffees from test-

(Testimony of F. B. Oliver.)

ing? That is to say, the Brandenstein coffee and the coffee at the little Mail Dock, from any test was made?       A. No, sir.

Q. And all you know is what you saw with your eyes?

A. What I saw myself and the experience I have had in the coffee business.

Q. As a matter of fact, the coffee, the oil-soaked coffee—

A. There was no oil-soaked coffee.

Q. You said that there was a great deal that had to be dumped into the bay?

A. There might have been a shovelful that had leaked through.

Q. I am not now talking about the coffees on the Little Mail dock, but the other dock. I understood there was a considerable quantity had to be thrown into the bay.       A. Not that know of.

Q. Then the only difference between those two was in the nature of the saturation of oil fumes?

A. No, I won't say that. The oil fumes went through the whole of it; there was some of it that was stronger than the other, because every particle was subject to the oil fumes, that whole cargo, every particle of it; the sweated coffee down there had commenced to mould, and then again you must remember that these Bogota coffees, Central American coffees and Mexican coffees contain a great deal more moisture than the Santos coffees; they are not dried so well.

(Testimony of F. B. Oliver.)

Q. Now, when was it you say this mould was first called to your attention? By whom was this?

A. Mr. Bissel.

Q. Mr. Bissel?

A. Yes. He was the manager for the Hazlett and certain warehouses.

Q. When did he call your attention to this?

A. Shortly after it came out, down at the Little Mail Dock. I had seen it myself, but he spoke to me about it as he was hauling it away?

Q. You had seen it down there on the Mail Dock?

A. I had seen it myself; that was on the Steuart Street wharf; none of that was on the Mail Dock at all; there was a matter of between 4 and 5 hundred, of course, I could not tell the exact number of bags, that were on the Little Mail Dock, of the Brandenstein that went into the California warehouse on Brannan Street, and all of that that was on the Steuart Street dock went into the Humboldt warehouse. All of that that was taken out at the Steuart Street dock went to the Humboldt warehouse, for the simple reason that to haul it to the California from there would be too far.

Q. You made no comparative tests of the two?

A. No, sir. I tell you the coffee was sold; I had no chance.

Q. It was on the dock until the 9th?

A. I know, but I had no right to touch the coffee, because that did not belong to me, and I did not want to have them say I had tampered with it. It was

(Testimony of F. B. Oliver.)

time enough for me to do that when they called on me to make an adjustment and appraisalment of that.

Q. Do you mean you would have committed a grievous offense if you had taken from a bunch of 1100 sacks, say, four or five grains?

A. No grievous offense at all, but I did not want any question to come up, to say that I had tampered with it, or passed an opinion on it, unless in the presence of the owners of that coffee.

Q. Did you ever call on the owners to come down with you?

A. No, I did not; it was for them to notify me.

Q. That, of course, is your opinion?

A. Yes.

Q. The coffee lay down on the dock then from the 30th or 31st of January until the 9th of February?

A. When it was taken away I don't know.

Q. The report you gave us the other day is correct, is it not?      A. Yes, sir.

Q. That means to say it was there for 10 days. You knew that this oil damage had been suffered long before the vessel had arrived, that she had been in trouble?      A. Quite naturally.

Q. As soon as you took off the hatches?

A. I was there then.

Q. You were there at that time?

A. I was there.

Q. You knew the coffee had been injured?

A. I did.

(Testimony of Leon Lewin.)

Q. And yet you delivered it to the various consignees without having made any test?

A. No, I won't say that, because when they came there they told me it was damaged, and I said I knew it.

Q. What I mean to say is you delivered it without making any tests or taking any samples?

A. Certainly.

**[Testimony of Leon Lewin, for the Respondent.]**

LEON LEWIN, called for the respondent, sworn.

Mr. KNIGHT.—Q. Mr. Lewin, you are a coffee broker, are you not?

A. No; coffee jobber; importer and jobber.

Q. And you were such during the year 1907, were you not? A. Yes, sir, I was.

Q. Do you recollect buying a quantity of damaged coffee marked "J. N. J.," that had, as far as you know, reached this port by the steamer "Santa Rita," consigned to Leege & Haskins?

A. Yes, sir. About the mark, I can't recall that. I presume that is the mark. Have you got it there? I have not got it in my mind.

Q. I am simply taking it from Mr. O'Brien's testimony. I suppose that is correct.

A. He has got the marks; I copied them, and I can give you the marks; it is the same as his because he gave them to me.

Q. You bought that from Mr. O'Brien, Mr. Lewin? A. He acted only as a broker.

Q. Mr. O'Brien handled it as a broker?

A. Yes, sir.

(Testimony of Leon Lewin.)

Q. Mr. E. H. O'Brien?

A. He submitted the samples, and he in fact took me down to look at the coffee; he was the broker in the matter.

Q. He was a broker and he bought it for your account?

A. Yes. You know he could not buy it without my sanction. You know I made an offer on the proposition, and he submitted the offer; he only acted between us.

Q. He was simply the agent, that is all?

A. The agent for both parties.

Q. Well, this offer came to you from him. It don't make any difference whether he was acting for you or for whom he was acting. I simply want to get at the fact; you bought it through him?

A. Yes, sir.

Q. I am not going into the question of the legal relations of Mr. O'Brien. You paid, what was it, 5¼?

A. 5¼ cents.

Q. Do you remember the date when you purchased that, Mr. Lewin?

A. No, I gave it to Mr. Oliver. I gave him a copy of the whole proposition on a piece of paper.

Mr. KNIGHT.—Have you the date, Mr. Oliver?

Mr. OLIVER.—It is on that brown piece of paper.

The WITNESS.—I gave him the date of the purchase. I gave him all of it to avoid coming up here; so there would not be any question about it, I gave him the whole thing about it.

(Testimony of Leon Lewin.)

Mr. KNIGHT.—Q. (After examining the paper.)

I do not see any date on it.

A. The 9th of February; that is my recollection of when I paid the bill.

Q. It was the 9th of February when you paid the bill?      A. Yes.

Q. You remember you bought it a short time prior to that?

A. Two days.

Q. Two or three days prior to that time?

A. To the best of my recollection; it might have been a day or two more.

Q. Do you remember, Mr. Lewin, when O'Brien first called your attention to that coffee, or was he the first one that called your attention to it?

A. Well, Mr. O'Brien, as far as I can understand, he showed that coffee to different parties, and I refused to make him an offer, so he called on me to look at the coffee, but I would not make an offer on it.

Q. He did call it to your attention then, did he?

A. Yes.

Q. Do you recollect how long before you purchased it it was that he called the coffee to your attention?

A. Well, that took probably two days, and the next day I made up my mind whether I wanted it or not; there was a day between.

Q. You took two or three days to consider the proposition?

A. One or two days, I would not say exactly.

Q. You went down and looked at it yourself?

(Testimony of Leon Lewin.)

A. Yes.

Q. Then you authorized him to buy it?

A. I made him an offer.

Q. And he accepted it? A. Yes.

Q. Did you sell that coffee again, Mr. Lewin?

A. Yes, sir.

Q. At what price did you sell it?

A. Well, if I would not have to answer that question, I would not like to answer it. If I have to, I will answer that question.

Q. Mr. O'Brien has testified regarding the matter, as to its retail price. Let me ask you this, Mr. Lewin: This coffee was resold through Mr. O'Brien by you, was it not? A. Yes, sir.

Q. And is it not a fact that he resold this coffee at 6¾ cents on your account?

A. I believe that is the price I sold the coffee for, but I must call your attention to the fact that—

Q. I am not going into the question as to whom you sold it or anything of that kind.

A. I could tell you the whole thing.

Q. If you don't care about going into it, I do not care anything about going into it. I simply want to get at the main facts.

Mr. DENMAN.—Q. You may explain the whole thing, Mr. Lewin.

Mr. KNIGHT.—Q. Very well, go ahead then.

A. Well, as soon as my attention was directed to that coffee I went and looked at it with Mr. O'Brien, and it looked like damaged coffee, what they call damaged coffee, and I made up my mind I would take



(Testimony of Leon Lewin.)

a chance at that coffee. I looked at it and I made Mr. O'Brien a bid of  $5\frac{1}{4}$  cents. Mr. O'Brien went with that bid to the insurance company, Mr. Theobald—

Q. Did you go with him?           A. No.

Q. I am only going to ask you to tell what you know.

A. I am going to tell you how that was. Mr. O'Brien went to Mr. Theobald with that sample. Fifteen minutes after I made that offer I went home and made a roast. I got a little in the machine to make a roast; I gave it another test. I called in the joint broker that lives right next door to me, Mr. Werlin, and I says, "George, what do you think of that coffee? I made a bid of  $5\frac{1}{4}$  cents." He said, "You are stung; I would not give you 2 cents for it." So I went to the 'phone and I called up O'Brien. You know that was 15 or 20 minutes, while I was looking at that coffee; you know that was a final test. So I went and called Mr. O'Brien up on the phone, and Mr. O'Brien, he was not in his office. I asked the person there where Mr. O'Brien was, and he said he went up to the insurance company. I called him up there at Mr. Theobald's, and I got him there, and I said, "Have you made that offer?" and he said "Yes." I says, "Can you withdraw that offer?" and he says, "No, it is a custom in the coffee trade that if you make an offer you can't withdraw it; that is, in the nature of the business, it would not be honorable to do it, and that is my principle, not to do anything that is not honorable even if I would lose

(Testimony of Leon Lewin.)

the whole cargo; he said I could not withdraw it once I made it and they accepted it. I felt very bad that I couldn't withdraw it, when he said I couldn't withdraw it. That is all I know about the coffee.

Q. That feeling of sadness was somewhat assuaged when you disposed of it at 6¾ cents?

A. Yes, but the thing cost me an enormous amount of money to get it in shape. I had to take it away at night; it might be condemned by the authorities.

Q. Who said they were going to condemn it?

A. On account of Brandenstein, who the insurance company did not settle with; they did not want to pay him, on account of this policy. His policy was different from that of Leege & Haskins and Schillings.

Q. He had an English policy?

A. He had some trouble with the policies, so his brother, who is an attorney, said they would condemn it. And naturally if they would condemn his cargo they would condemn the cargo that I bought.

Q. So that you had heard that Henry Brandenstein had stated to his brother that the government could condemn that coffee, or that it could be condemned, did you?

A. I heard that; there was a rumor that the coffee could be condemned; it was Mr. Brandenstein, I surmise, their attorney, who told them that.

Q. Brandenstein naturally wanted to make that a total loss so as to recover on the policy.

(Testimony of Leon Lewin.)

A. I suppose so, and naturally he would. But such coffee could be condemned. I could go now and condemn lots of coffee or other goods in this market.

Q. You could condemn, you say?

A. You can condemn any line of goods, you can condemn any merchandise; you can go into a store and you can condemn salmon; you can condemn any merchandise, any fish, or anything, if you try to go after them.

Q. How long after our purchase of that coffee did you resell it, or did Mr. O'Brien resell it for you?

A. I will tell you how the thing was worked. When I heard that, in the first place the Hazlett Warehouse refused to take coffee in any of their warehouses, because it was a fact that that was not oil in it, that was creoline; oil would not damage the cargo; it was creoline or some of those disinfectants was on that coffee—creosole or creoline, I don't know the word for it; it smells like a disinfectant.

Q. What warehouse refused to take it?

A. The Hazlett Warehouse was the only warehouse; they owned all the warehouses here, and they say they cannot put it in their warehouse.

Q. So the Hazlett Warehouse refused to take it?

A. Yes, and they suggested to me that they had a separate warehouse made out of sheet iron, or whatever you call it; they said that was empty and they said they would put it in that warehouse for me.

Q. Where was that warehouse?

A. Well, it was not far from there, probably 10 or 15 blocks from there, where they had a shed, you

(Testimony of Leon Lewin.)

know, they call it a shed, galvanized iron shed, where they stored that coffee; that was alone there.

Q. So you stored the coffee there, did you?

A. I stored the coffee there, and I got people working there day and night, dumping out the coffee and filling it in new, good bags, buying new bags and refilling it, and I shipped it out of the city, and I shipped it to St. Louis.

Q. Did you sell that coffee before it left here or after?      A. No, no; after.

Q. Do you remember when you shipped that coffee out of here?

A. I don't remember the date, as fast as I could load it into the cars to ship it out of the state.

Q. You shipped it out as soon as you could?

A. Yes, sir.

Q. You sold it how many days after you had shipped it?

A. It generally takes four or five days before the samples reach them. You know when we ship it we mail the samples by express, and that takes four or five days before the express reaches them, and it took about 7 or 8 days in all.

Q. And you sold it on the samples?

A. On the samples I sold it.

Q. Did you sell it at different places or one place?

A. I sold it to one place, one broker.

Q. Away from San Francisco?      A. Yes, sir.

Q. What was the expense attendant on the handling of that coffee, Mr. Lewin? Have you that statement?

(Testimony of Leon Lewin.)

A. This is not right, this statement. There is a whole lot more expense attached to that thing.

Q. What was the amount you paid the warehouse?

A. Well, the warehouse charges, with the sacks, was over \$1,000, to the best of your recollection.

Q. Have you your books to show that?

A. Well, by digging it up, I could probably dig that up.

Q. I shall have to ask you, Mr. Lewin, to show us your books, as to how your claim is made up. We have a statement made up, let me tell you, as far as could be from the Hazlett Warehouse Company, which Mr. Oliver got showing an expense which you paid to that warehouse of \$427.74.

A. Was that the original bill?

Q. The original bill was \$458.60, the total charge, and then it was reduced to \$427.27, which included hauling, 1,874 bags—

Mr. DENMAN.—One moment. I suppose it is understood I object to all this line of testimony on the ground that you cannot show the value of coffee in San Francisco by showing a warehouse charge or what it was sold in St. Louis or some other place for.

Mr. KNIGHT.—Q. There were some of the bags that were torn?

A. We did not use one old bag; we had to change all of the bags.

Q. How many bags did you change, Mr. Lewin?

A. I could not tell you; I changed the whole cargo; every bag was resacked.

(Testimony of Leon Lewin.)

Q. How many bags did you pay for?

A. I could not tell you; I bought all the sacks that I had to buy—I had to buy all of them. There was a value to those sacks; I had to replace them.

Q. Did you replace all of the sacks in which that shipment originally came here? A. Yes, sir.

Q. And did you pay the Hazlett Warehouse for them? A. I bought them outside.

Q. You bought them outside of the warehouse?

A. Yes, sir.

Q. How many bags?

A. Whatever I was short, or maybe I had them in stock; I always have got 5 or 6 hundred bags of my own, sacks that sold at or had a market value of from 8 to 9 cents apiece.

Q. Maybe we can shorten this a little; how many bags did you pay for outside of the Hazlett Warehouse? A. I can't tell you.

Q. Well, your books will show that, will they not?

A. Yes, sir.

Q. Your books would show any charge or any expense that you incurred outside of the expense incurred at the Hazlett Warehouse, would they not?

A. No—if I had that on file, it would show. I put the coffee in the expense account of the Hazlett Warehouse. Now, it may be that will show that. If it does, I will be only too glad to let you have it.

Q. Your Hazlett Warehouse expense account apparently shows \$427.74.

A. My ledger account shows \$4,900 I paid to the Hazlett Warehouse.

(Testimony of Leon Lewin.)

Q. Four thousand nine hundred dollars?

A. Yes, for the year.

Q. I am speaking with reference to this shipment?

A. I don't think I can segregate it; if such a thing is so and I can do it I will be only too glad to segregate it and find it out for you.

Q. Your books show then the payment of \$4,900 to the Hazlett Warehouse for the year for storage; is that the idea?

A. Storage and mixing charges.

Q. How long did you have this stored in the warehouse?

A. This was not in the warehouse at all. This would be thrown in the same thing; it would go under the same heading, this expense account.

Q. Would the expense in connection with this coffee appear in that \$4,900 item?      A. Yes, sir.

Q. How would it be itemized?

A. I will tell you what we do. We paid \$490 to Hazlett this month—the Hazlett Warehouse Company; \$490, that goes to coffee expense; that is added to the coffee value, you know.

Q. You say you paid that this month on coffee that is in the warehouse: is that the idea?

A. Suppose I were to pay out \$490. Just for argument sake, take that, that we paid Hazlett \$490; that goes into the account against the coffee.

Q. Of course any expense would go against the coffee, but would that be expense for storage?

A. For storage and mixing.

(Testimony of Leon Lewin.)

Q. How much of that \$4,900 is chargeable to this particular consignment, the Leege & Haskins coffee?

A. The whole thing what we paid to Hazlett, or it might have been entered up in the whole total of the month; maybe that month I paid \$1,200 or \$1,400 or \$900; I don't know about that.

Q. Mr. Lewin, you have your books in such a shape you can tell any shipment of coffee what the expense has been? A. The warehouse expense.

Q. So you can calculate on any given shipment how much you make or lose?

A. Not on so many bags as that. You could make it on 40 bags of coffee, all right; I will take 40 bags and give it to you in a second, what the charges are.

Q. Why can't you tell me in a second what the charges are on 1,067 bags?

A. You want it to the pound; I can't give it to the pound to you; it is about two years ago, and I can't give you what I paid to the Hazlett Warehouse for that now. I could look it up and tell you how much I paid the Hazlett Warehouse that month.

Q. I am afraid we shall have to ask you for your books, if we can not get any more details here. We have this charge of \$427.74 made for hauling the coffee, and we have a certain quantity of bags.

A. Is the bags included with that?

Q. No.

Mr. OLIVER.—I had added \$300 to that for the bags alone.

Mr. KNIGHT.—Q. What is this item, 1,574 bags?



(Testimony of Leon Lewin.)

Mr. OLIVER.—That is the total of what he bought.

The WITNESS.—What have you got there from Hazlett?

Mr. KNIGHT.—Q. We have the original charge of \$456.60; that was the original charge, and that amount was reduced to \$427.74?

A. And what else have you got?

Q. That is all. A. And the sacks.

Mr. OLIVER.—I estimated the bags would be worth \$300.

The WITNESS.—That would make it \$727?

Mr. OLIVER.—That would make it, say, in the neighborhood of \$750.

The WITNESS.—That is what you want to get at. I will say that is right, for argument's sake.

Mr. KNIGHT.—Q. That that would make it, with the bags, about in the neighborhood of \$750, the expense to which you were subjected in handling that shipment?

A. Yes. Well, then, have you that list I gave to you (addressing Mr. Oliver). I want to read off some other expenses that go with it. I will take it, for argument's sake, that that is right. I don't want to have to come around here again unless I have to. Say for argument's sake that is right. Loss in weight, have you figured on that?

Mr. OLIVER.—I don't know what the weight was you sold.

Mr. KNIGHT.—Q. What was the weight of the coffee you sold? Have you got a memorandum of that?

(Testimony of Leon Lewin.)

A. Give me the list. I can telephone for the loss of weight and get it here in five minutes.

Q. Can you get now over the phone the weight that you have sold? A. Yes, I think so.

Q. I would like to get the weight of the cargo, which would be the amount you received; dividing that by  $6\frac{3}{4}$  cents would give the weight, I presume.

A. You can take it at  $5\frac{3}{4}$ —what I paid for it.

Q. Very well, take it at  $5\frac{3}{4}$ , and what you sold it at,  $6\frac{3}{4}$ .

A. You don't want the brokerage? There is brokerage on that cargo.

Q. What other expense, if any, did you incur besides that estimated expense of \$750 that Mr. Oliver has allowed? A. I paid a double brokerage.

Q. You paid a double brokerage?

A. Yes, sir.

Mr. DENMAN.—Q. How much does that amount to?

A. Well, it amounts to, if it was taken at 15 cents a bag, it was probably \$225 on that cargo.

Mr. KNIGHT.—Q. You paid a brokerage—is that to Mr. O'Brien?

A. Yes, and I paid a brokerage to the fellow in St. Louis; he also got 15 cents a bag; that makes it 30 cents.

Q. Thirty cents a bag?

A. Yes, 30 cents a bag brokerage.

Q. Let us see what you actually did pay in brokerage, Mr. Lewin. You paid in the first place a brokerage to O'Brien, did you?

(Testimony of Leon Lewin.)

A. Yes, 15 cents a bag.

Q. When you purchased it?

A. No; when he sold it for me.

Q. You paid him a brokerage of 15 cents a bag; is that right?

A. Yes; he has got to pay 15 cents to the broker in St. Louis; I had to pay that too.

Q. Then the total brokerage you had to pay on it was 30 cents a bag?

A. Yes. If you will tell me what you want I can probably get it in a minute for you over the phone. (After telephoning.) He is not there.

Mr. DENMAN.—Q. As I understand it the \$750 was for mixing the coffee and the bags?

A. Yes.

Q. Mixing charges and bags? A. Yes.

Q. How about your drayage?

A. Say the whole thing together is that.

Q. In the \$750? A. Yes.

Mr. KNIGHT.—Q. You paid a double brokerage, you say? A. Yes.

Q. Was that all?

A. Well, there was interest charges, too.

Mr. DENMAN.—Q. What would the interest charge be?

A. Well, from the time I put my money out until I got the returns back; say half a month at 6 per cent, for account of money that I invested.

Mr. KNIGHT.—Q. You don't remember just when it was you sold that coffee, do you?

(Testimony of Leon Lewin.)

A. How long it was.

Q. How long you were out your money?

A. I could not tell you. You know those things are paid for by sight drafts; it took 8 or 9 days for the samples to get acted on. Say, roughly, 14 or 15 days.

Q. Didn't you send those samples on before you bought it?

A. No—before I bought it? I couldn't have got the samples before I bought it.

Q. You think you were out your money about half a month?

A. Probably a little less; probably 13 days.

Q. We will call it 15 days; half a month would be a quarter of a per cent.

Mr. DENMAN.—Q. On how much money was that? Is this 1528 short, the shortage in weight that you referred to—is that the shrinkage?

A. That is the shrinkage.

Q. How much is that?

A. 1528 pounds short.

Mr. KNIGHT.—Q. Whom did you get that from? Is that your memorandum?

A. Yes. That was what I bought and what I received.

Mr. OLIVER.—\$16,495.28; that is the whole thing. That was the face of the bill.

The WITNESS.—I got that from my bond.

Mr. KNIGHT.—Q. You paid, then, \$16,495.28 for the coffee? A. Yes, sir.

Q. You sold it for how much?

(Testimony of Leon Lewin.)

A. What, the coffee?

Q. Yes.

A. I don't know; I have not got that, you know.

Q. Was that shortage of weight made up by the ship?

A. I could not tell you. I bought it on the invoice weight.

Mr. DENMAN.—Q. That is 152,764 pounds?

A. I could not tell you how much I sold.

Mr. KNIGHT.—Q. How much did you sell?

A. That is what I will find out.

Q. Mr. Lewin, perhaps I can get at it this way: do you remember that there were delivered to you 31 bags of coffee afterwards?      A. Yes.

Q. Didn't that make up the shortage?

A. No.

Q. What was the shortage after that delivery of that coffee?

A. Well, offhand I could not tell you; it must have been about 2 or 3 thousand pounds.

Q. Well, your books will show that, won't they?

A. The only way I can arrive at that is what I paid for and what I sold.

Q. That is about the only way you can get it, from what you paid for, the pounds you paid for and the pounds you sold?      A. Yes.

Q. You can make up a statement of that and you can give it to me or to Mr. Oliver?

A. Mr. Oliver can come down with me and I will give him the whole thing. I can tell him then what day it went out.

(Testimony of Leon Lewin.)

Mr. DENMAN.—Q. Now, Mr. Lewin, how large a sample did you send on to St. Louis; was it a very large one?

A. That was a 5 pound sample; I took about a 5 pound sample.

Q. Out of about 1500 bags? A. Yes, sir.

Q. That was not much of a sample, was it?

A. Well, it is a pretty fair sample.

Q. Out of 1500 bags? A. Yes.

Q. Do you know anything of the subsequent history of that coffee, whether it had been sold or not?

Mr. KNIGHT.—To which we object, what the history of it is.

A. I do. I was informed that the party that bought that coffee could not dispose of it—

Mr. KNIGHT.—We object to that as hearsay.

A. (Contg.) For a whole year or more. Whether he has got it yet I don't know, but I know that coffee could have been bought for less money than I paid for it; that I know. I suppose they bought it thinking they would do something with it too.

Mr. DENMAN.—Q. Now, there is no regular market for that sort of coffee, is there?

A. No. It is merchandise, and whoever buys it is liable to get soaked.

Q. There is a gambling chance in it then?

A. Yes, there is a chance to it.

Q. That gambling chance is made up by the possibility of condemnation by the Government; that is one of the elements of the gamble?

(Testimony of Leon Lewin.)

A. There is something to that. But most of the people they don't trade in those articles, not a reputable house.

Q. No reputable house would? A. No.

Q. As a matter of fact, such coffees are usually worked off, are they not, by mixing them?

A. By mixing it, or giving it to the sailors or South, New Orleans—those colored men and those on the seal boats, and so on; half the time they don't know what they are drinking.

Q. How long have you been a coffee broker?

A. I have been in the coffee business for 25 years.

Q. Did you ever grow coffee?

A. Well, I owned once a plantation—no, I would not say I grew coffee; I know all about it.

Q. Now, let me ask you: in view of your knowledge of this coffee, the information that you gained as an expert since then, and the history of the coffee, and your general expert knowledge on coffees, do you think 5¼ cents was a fair price for the coffee at the time you purchased it?

A. By all means. I would not buy it to-day if that thing were repeated; I would not buy it by no means.

Q. Then, as I understand you, you consider it a lucky chance that you got rid of it?

A. It was a lucky chance with me that I got rid of that coffee.

Q. Do you think that you sold it at a price higher than the fair market value at San Francisco?

A. When I sold it?

(Testimony of Leon Lewin.)

Q. Don't you think that you sold it at a good deal more than the market rate?

A. You could not dispose of it here at all.

Q. You could not dispose of it here at all?

A. No, sir.

Q. That is to say that coffee had to be taken to some place where they could work it off in job lots?

A. Yes, chance sales for damaged articles. Now, some people you could never get to buy that; people who never buy a damaged article, because they won't take anything that is damaged; other people will buy it.

Q. What was the name of this other broker who said to you that it was not worth 2 cents?

A. Mr. Wirlin.

Q. Was there any discussion in the coffee market regarding this St. Louis coffee at that time?

A. Well, they said, "Lewin got soaked again."

Q. That is, referring to yourself, I presume?

A. Yes, that was referring to me.

Q. As a matter of fact, you managed to pass that along to St. Louis; that was the chance of it, was it not?      A. Yes, sir.

Q. Did you get any offer from any other city for that coffee?      A. No, sir.

Q. How many places did you send your samples to?

A. New York, Chicago, St. Louis, Kansas City, and I believe to five or six places.

Q. You never heard from any of those?

A. No, sir.



(Testimony of Leon Lewin.)

Mr. KNIGHT.—Q. You hardly had time to hear from the other samples before you had sold it?

A. They got their samples, but as that man made me the offer he got it.

Q. The fellow in St. Louis wired you an offer?

A. Yes, by all means; everybody wires; you don't wait for letters to do business; all business is done to-day over the wire.

Q. As soon as this man in St. Louis got the sample he wired you an offer of  $6\frac{3}{4}$  cents?

A. He wired an offer of  $6\frac{3}{4}$  cents and he got it.

Q. You wired an acceptance? A. Yes, sir.

Q. So then the fellow who was not doing business by wire did not have a change to get that coffee?

A. Nobody does business by letter in the coffee trade. There is no one man that I send a sample to that I don't get a wire in five days—if I don't get a wire in five days then he don't get them any more.

Q. Mr. Lewin, how do you know that you could not dispose of that coffee in San Francisco?

A. In San Francisco?

Q. Yes. Did you try to dispose of it?

A. No; I will tell you the reason why: Mr. Folger, Mr. Schilling, Mr. Brandenstein and Mr. Hills and all those big reputable houses, they would not buy such coffee; they would never buy that damaged coffee.

Q. Did you go around and ask them?

A. Oh, I know; the same as you would not go around and buy a damaged thing.

(Testimony of Leon Lewin.)

Q. So you assume because the coffee was damaged they would not handle it?

A. I know they wouldn't handle that damaged coffee.

Q. Therefore you assumed it was useless to go to them?

A. Yes, entirely useless.

Q. Did you ask Mr. Cambron if he would like to get the coffee?

A. I had nothing to do with Mr. Cambron; he was a broker just like Mr. O'Brien; Mr. Cambron is a broker, and he has sold coffee for me. If I have got any coffee, and Mr. O'Brien takes the samples and goes around and shows it to the people, that is out of his hands.

Q. Still why didn't you exhaust the coffee buyers here in San Francisco, that is the people that you thought might have handled the coffee before you sent the samples on to these eastern cities?

A. It would have been a detriment to me, a big detriment.

Q. A detriment to hawk the coffee about?

A. It would have been a detriment to me, to sell such coffee; they would be saying, "Lewin is selling unsound coffee." That is all my competitors would want me to do, to do that.

Q. So that you did not want to get the reputation of handling coffee that had been damaged?

A. That is the whole thing.

Q. You wanted to get it out of here as soon as you could?

A. That is it exactly.

(Testimony of Leon Lewin.)

Q. Sort of save your reputation in the community?

A. Yes, at least I tried to, and I tried to make anything honorable out of it. Now, talking about this thing here, I will tell you about a thing I had. I had 900 bags of coffee of the same nature and I lost \$4,000 on it just six months before that on the same kind of a deal. I bought it and paid \$4,000 out of my pocket on the same kind of a proposition.

Mr. DENMAN.—Q. Then such speculations are largely speculative in their nature?

A. Yes. I lost the \$4,000 in one transaction, on 900 bags of coffee.

Mr. KNIGHT.—Q. You felt you could get even on this shipment?

A. I didn't feel sure, but I took the chance. You understand I am entirely out of this thing, either with the insurance company or Leege & Haskins, and I want to do the right thing; I don't care what way the case goes, because I am not interested in it at all.

Mr. DENMAN.—Q. As I understand, you received some sweepings later on? A. Yes.

Q. Were they in as good condition as the other?

A. No. That was, you know, the same coffee with dirt in it, and it had to be fanned and all that. I sent it to the Hazlett Warehouse to have it fanned out, the dirt and stuff that gets in it from the bottom of the ship and around the wharf.

Mr. OLIVER.—Q. Where did that go?

A. In the Southern Pacific. You asked me about that the other day.

(Testimony of Leon Lewin.)

Mr. DENMAN.—Q. What became of that coffee? A. It was delivered to me.

Mr. KNIGHT.—Q. And after that?

A. After that, I know I had 1500 pounds; I had it fanned and cleaned; I remember that at one time there was a sailing vessel that wanted some strong coffee, and I sold *it one* of those commission merchants here; I sold it to them; I sold one man 900 pounds, and so on.

Q. You retailed it?

A. Yes. That went out with the sailors, going north, who wanted strong coffee.

Q. They wanted something that would stay by them? A. Something that will smell.

Mr. DENMAN.—Q. They wanted an oily coffee for an oily voyage?

A. You know they want strong coffee, those fellow that go north.

Mr. KNIGHT.—Q. How much did you sell that coffee for?

A. Probably 6 or 7 cents; something like that; I don't know exactly.

Q. Couldn't you tell us a little more exactly?

A. Well, if it would be any benefit I could tell.

Q. We do not care to know who it was.

A. Well, in the neighborhood of from 6 to 7 cents; it might have been 7, and it might have been 6.

Q. Are you sure it was not more than 7 cents that you sold any of that coffee?

A. Yes, that I am sure of.

(Testimony of Leon Lewin.)

Mr. DENMAN.—Q. That was sold in small quantities, comparatively small quantities?

A. Of course, the whole thing was not very much.

Mr. KNIGHT.—I would suggest that Mr. Oliver and Mr. Lewin examine the books and get some statement up as to these expenses. Unless there are some further questions to ask, I do not care to have Mr. Lewin back.

Mr. KNIGHT.—Q. Let me ask you this: Couldn't you have done better with this coffee if you had held it in San Francisco for a while, Mr. Lewin, instead of sending it immediately away from here? That is, providing you were not looking out for your reputation as a jobber in damaged coffee—aside from that; looking at it entirely from the dollar and cents proposition?

A. I cannot answer that question; that is a question nobody can answer. It is the same thing as if you would go and buy so many stocks; you would take the first good bid you got when you sell them. I was always of the impression that I was soaked on that coffee; that was always my impression, and it is even to-day.

Mr. DENMAN.—Q. Now, as a matter of fact, there is no market for that kind of coffee here in San Francisco, is there?

A. Well, I will tell you; take this coffee, for instance; if a fellow wanted to take advantage of another fellow and hides it and dishes it out by small parcels, you could fool somebody with it, and of course you could get more money out of it; you know

(Testimony of Leon Lewin.)

if they didn't know anything about the coffee and came there and bought it you might fool them and get more money out of it; you hand them a package.

Q. When you use the word "fool" you mean cheat somebody with it?

A. That would be about it, about the size of it, because if I sell you something which is no good and you go home and find that out, why you feel you don't get a square deal.

Mr. KNIGHT.—Q. Don't you suppose those people in St. Louis would blend or mix it with other coffees? Isn't that the way they ultimately put it upon the market?

A. That is the only way they could get rid of it.

Q. That is the only way they could dispose of it?

A. I would not do it; if they want to take the chance, let them do it; I wouldn't. Of course, you know some people can sell anything; they can go out and sell bricks for \$4; somebody will buy bricks for that. I won't handle it and the trade won't handle it. I know that. While the coffee, some of the coffee would bring more money, if you take 2,000 bags and try to sell it you couldn't dispose of it; even a coffee man knows that. Do you think a fellow could sell that coffee in that way in bulk?

Mr. OLIVER.—I would not have attempted to sell it in that way.

[**Testimony of F. B. Oliver, for the Respondent (Recalled).**]

F. B. OLIVER, recalled.

Mr. KNIGHT.—Q. How would you have disposed of such coffee?

A. I would put it in a warehouse; I would not have sat and worried about that.

Q. Do you think if it had not been disposed of as quickly it would have brought a better price?

A. Yes.

Mr. DENMAN.—Q. In other words, in the manner Mr. Lewin has described it?

A. Certainly. There is nothing injurious to the coffee, absolutely nothing injurious; it simply loses its taste.

Q. Simply a question of getting into a man's stomach without passing through his nose.

Mr. LEWIN.—That is about it.

Mr. KNIGHT.—Q. It was not coffee that was deleterious to health?

A. No, sir.

Mr. LEWIN.—You know if you take coffee like that, say five bags and mix it, and if you make coffee you will get a cup you don't like; maybe the next cup will be better.

Mr. DENMAN.—Q. You know some people like coffee with chickory in it?

A. Chickory has a good flavor in it, but this was all gone.

Mr. OLIVER.—No flavor at all.

Mr. KNIGHT.—Then a man would have to drink a quantity of it to—

(Testimony of F. B. Oliver.)

Mr. LEWIN.—It was there; no question of it. I had it in the sun; it never went out of it. I had it in the sun for six hours. I wanted to test it myself; I wanted to put it in the sun like they do raisins here, I thought maybe the sun would take that out, but it was still there.

Mr. DENMAN.—At the end of six hours the odor had not gone out?

Mr. LEWIN.—The odor had not gone out.

Mr. KNIGHT.—Mr. Denman, what time did you receive that sample, or where did you get that sample you offered in evidence here the other day, from whom?

Mr. DENMAN.—I got that sample from O'Brien's office.

Mr. KNIGHT.—Given to you as a sample of this Leege & Haskins coffee?

Mr. DENMAN.—Yes.

Mr. KNIGHT.—Do you remember how long ago it was that you got that sample?

Mr. DENMAN.—It was shortly after the time it came into the office.

Mr. KNIGHT.—That would be along in February, 1907.

Mr. DENMAN.—Yes. I had that in the paper bag for about two weeks. I then sent my clerk out and got a fruit glass with a tight tin top on, and I left some in the bag and I put the remainder into the glass, and it was the glass and bag I put in evidence.

Mr. KNIGHT.—You put in evidence the glass and the stuff in the bag.



(Testimony of F. B. Oliver.)

Mr. DENMAN.—Yes. The stuff in the glass had retained its odor; the stuff in the bag had lost much of its odor, although when taken in the hand it would still come out, and it was quite noticeable to the test.

Mr. KNIGHT.—Where were these samples kept, the two samples?

Mr. DENMAN.—They were kept in the safe in my office.

Mr. KNIGHT.—The coffee that was kept in the glass jar, was that kept closed?

Mr. DENMAN.—No. I opened it three or four times to see whether the odor still remained in it.

Mr. KNIGHT.—I mean it was not kept open in the meantime.

Mr. DENMAN.—No.

Mr. KNIGHT.—You got that along in about the month of February, 1907.

Mr. DENMAN.—Yes.

Mr. KNIGHT.—As far as we are concerned, that will probably close the evidence, that is, when we have got that statement from Mr. Lewin showing the brokerage on the coffee, the amount of coffee which he sold, and the amount which he bought.

Mr. DENMAN.—Mr. Lewin, we want every item that entered into it; every item that entered into the cost of this particular consignment.

**[Testimony of Leon Lewin, for the Respondent  
(Recalled).]**

LEON LEWIN, recalled.

Mr. DENMAN.—Q. (Handing a sample to the witness.) Can you taste it?

(Testimony of Leon Lewin.)

A. That coffee has improved wonderfully.

Q. Can you taste it at all?           A. No.

Mr. DENMAN.—I can.

Mr. KNIGHT.—I cannot.

Mr. DENMAN.—Q. Can you taste it?

A. No, sir.

Q. Mr. Lewin, now that you have chewed this up, can you notice the odor of the chemical?

A. Yes, I can after a while. It is not as bad as it was; it was better than it was.

Q. Now, take that, Mr. Lewin (handing)?

A. Yes, there it is.

Mr. KNIGHT.—Q. You are showing him the stuff that has been kept bottled up?

A. Yes, that is it.

Mr. DENMAN.—Do you smell that, Mr. Knight?

Mr. KNIGHT.—I can smell some substance that is foreign to the coffee.

The WITNESS.—That is not oil. That is creoline or creosote.

Mr. KNIGHT.—Q. Now take one of these beans which is taken from the bottle which has been kept sealed up.

A. (After examination.) There is no comparison between the two. You know they will lose the flavor and take it on again. If you store coffee with pepper the coffee odor will go in with the pepper smell and then loses it again.

Mr. DENMAN.—Q. It draws from it and then it loses it?           A. Yes.

(Testimony of Leon Lewin.)

MR. KNIGHT.—Q. You have tasted the coffee in the bag. Does it retain any of the taste of the chemical that affected it? A. Slightly.

Q. Would that affect the sale of the coffee in the market to-day?

A. Coffee like that, yes. You have got to roast it and see whether it is in the coffee; if that don't show up in the cup that would not affect it.

Q. Now, how about the stuff in the glass here; is that substantially in the same condition as when it was when it came off the ship?

A. It was worse than that.

Thursday, March 18th, 1909.

LEON LEWIN, recalled.

MR. KNIGHT.—Q. Mr. Lewin, what books have you got there?

A. I have all the books that I can produce.

Q. You keep a warehouse book, don't you?

A. You bet you.

Q. Will you examine your warehouse book and state the amount of coffee that you put into the warehouse?

A. I have not got that in my warehouse book. That was an exceptional case, because the warehouse would not take it, and I turned it over to the Hazlitt Warehouse, and that was never entered into the warehouse book. All the entries that I have is here.

Q. Did you make any note of the amount of coffee you purchased through O'Brien?

A. Yes, sir.

(Testimony of Leon Lewin.)

Q. How much coffee did you buy through O'Brien?

A. I bought from Mr. O'Brien 391 bags marked G. S.

Q. When was that?

A. I have got in my book February 7th; that was when I entered it in my book.

Q. That is when you entered it in your book. When did you buy it?

A. I gave this gentleman (pointing to Mr. Oliver) all the details, and I was looking over my papers for it this morning and I can't find it. I gave him all the details of the purchase. You can find it from the Bickford contract.

Q. Does the book show a purchase on either February 5th or February 6th of coffee through O'Brien?

A. No, sir. The record that I have got I will give you, the marks and everything.

Q. Covering what length of time, all on the same date?

A. It might have been purchased the same day. There was purchased the coffee in two parcels, one was from the New Zealand and one from the Canton Insurance Company, Ltd.

Q. Now, what did you purchase from the New Zealand?

A. Well, add them up. From the New Zealand 391 bags and 124 bags; that is all, it says here, marked G. C. St. L.; 391 marked G. C. and the 124 marked St. L.

Q. A total of 515 bags?

(Testimony of Leon Lewin.)

Mr. DENMAN.—Q. That is New Zealand.

Mr. KNIGHT.—Q. That is from the New Zealand?  
A. Yes.

Q. Have you got the weights there of the bags?

A. No, they never gave me weights. I bought these coffees by the invoice weights, which invoices you have got. You can get the originals from the insurance companies.

Mr. KNIGHT.—Have you got that invoice with you, Mr. Denman?

Mr. DENMAN.—No.

Mr. KNIGHT.—Q. What is the Canton?

A. The Canton was 983 bags of coffee.

Q. Marked how?

A. U. S. That is the way I remember it.

Q. The weight is not given there?

A. I bought from the Canton the following lots, 53 bags of E. V.

Q. Is that in addition to the 983? A. Yes.

Q. 53 marked E. V.?

A. Yes. 23 marked S. S.

Q. Is that the total? A. That is the total.

Q. That is 1,059, is it?

A. That is what they sold me, but they didn't deliver it.

Q. That was the amount of coffee which you purchased, was it? A. Yes, sir.

Q. And which you paid for?

A. That is what I paid for.

Q. Where did you get these figures from, Mr.

(Testimony of Leon Lewin.)

Lewin, that you have given—that you have read from? A. From the contract with Bickford.

Q. From the contract of Bickford?

A. Yes.

Q. You just got the figures from Bickford's contract and entered them in your book?

A. Yes, sir.

Q. Did you ever yourself determine how much coffee you actually did receive?

A. No. I can only tell by the outgoing weights when I sold it.

Q. That is outgoing from the warehouse?

A. Yes.

Q. You got those from the warehouse book?

A. No, I didn't keep any warehouse book.

Q. From their warehouse?

A. From their warehouse weights.

Q. They furnished you with the weights as you ordered it out?

A. They gave me the weight tags, all the final tags when they weighed it.

Q. What do your books show with reference to the outgoing coffee?

A. You see I had those parcels loaded in cars. I will give you every car, the weight; that is the way I dealed it out.

Q. You dealed it out by weight and bags, too?

A. Yes. 400 bags was in a car, and 320 in a car, 263 in another one, and that in another. Everything in this was "Santa Rita" coffee except 85 bags which were added, which I sold in the same invoice.

(Testimony of Leon Lewin.)

Q. Where did those come from?

A. Those were my own property.

Q. That you had purchased before you purchased the "Santa Rita" coffee?

A. Yes, sir.

Q. Then exclude that 85 bags.

A. I sold them 1,659 bags of which 85 belonged to me.

Q. You sold 1,574 bags; is that correct?

A. Yes, sir.

Q. And what is the weight?

A. The total weight. You want the gross or net?

Q. What is the difference between gross and net?

A. There is a difference between that.

Q. We want the gross weight?

A. 234,116 pounds less 11,378.

Q. The 85 bags weighed 11,378?

A. Yes, sir.

Q. That leaves 222,738 pounds.

A. Yes.

Q. You handled the Schilling coffee and this Leege & Haskins coffee as one lot, didn't you?

A. Sold it as one lot; one might have been put in to the other in the sacks.

Q. Now, I understand, Mr. Lewin, that the total weight of the coffee as shown by the libels is 152,764, and that you bought and paid for 151,236.

A. I gave this gentleman here all the weights from the bills this morning. When I went through that thing we added those 85 bags which would make up what went out, which we only found out yesterday. So all I got from Leege & Haskins I paid by the in-

(Testimony of Leon Lewin.)

voiced weights. Whatever his invoice originally called for that is what I paid him.

Q. Whatever whose invoice called for?

A. The Canton gave me a weight. He (pointing to Mr. Oliver) got it; he got everything that I had. I was looking for these papers to bring them along this morning and I couldn't find them.

Q. You don't know what weight the Canton or the New Zealand gave you?

A. That is what I was looking for and trying to locate this morning.

Q. Mr. Lewin, how much did you pay the insurance company for the coffee—the insurance companies? A. I could not tell you.

Q. How many pounds did you pay for?

A. They presented me a bill with so many pounds, what the invoice called for.

Q. They presented you a bill for so much per pound, for 152,764 pounds? A. Exactly.

Q. And you paid it?

A. I paid it according to the invoice weight.

Mr. DENMAN.—Q. How did you pay that, Mr. Lewin? A. By check.

Mr. KNIGHT.—Q. Have you your check here?

A. No. That is three years ago.

Q. Where is your check-book?

A. I will have to dig that out.

Q. You keep your check-books, don't you?

A. Yes, sir.

Q. It won't take you more than a few minutes to find out the amount you paid to the insurance company for this coffee, will it?



(Testimony of Leon Lewin.)

A. I will give it to you.

Mr. DENMAN.—Q. You have shown here that of this coffee you received from the steamer “Santa Rita” you sold 222,738 pounds. A. Yes, sir.

Q. That is correct, is it?

A. Yes. I take that for granted.

Q. That is to say 234,116 pounds less the 85 bags amounting to 11,378 pounds? A. Yes.

Q. So that you sold of this coffee 222,738 pounds, and that is all you received or sold, is it not?

A. And the sweepings which I received, which belonged to me, to make up the shortage.

Mr. KNIGHT.—Q. How much sweepings did you receive?

A. I don't know. The man who delivered them ought to know. I don't know the weight.

Q. Whom did you pay for the sweepings?

A. Nobody. The sweepings belonged to whoever bought the coffee. It was agreed that the sweepings belonged to the owner of the coffee, but this gentleman here (referring to Mr. Oliver) said that the sweepings belonged to the ship.

Q. All of the sweepings were 1,528 pounds, were they?

A. That is the way it figured out on paper. Take it for granted that is right.

Q. You cannot tell whether that is right or not?

A. I could not tell. I would not swear. Take that for granted. Whatever you say, gentlemen, that goes.

(Testimony of Leon Lewin.)

Q. Then you are not in a position to state what shortage, if any, there was in that cargo?

A. Nobody can tell that. I can only tell what I bought and what I sold. That is the only way I can arrive at it.

Mr. DENMAN.—You did not sell any more than you bought? A. No, sir.

Q. Then the amount that you sold is the exact amount that you bought from the Leege & Haskins and Schillings? A. Exactly.

Mr. KNIGHT.—Q. You don't know how much sweepings you received? A. No, sir.

Q. Because they didn't go into the warehouse?

A. We had them in the warehouse down there.

Q. You ordered them out of the Southern Pacific warehouse, the sweepings out of the Southern Pacific warehouse on the 15th of July, 1907, to the Gibraltar warehouse, did you? A. Yes.

Q. Then you mixed that with other coffee?

A. Yes.

Q. Amounting to 1100-odd bags of coffee; is that correct? A. Yes.

Q. And then you sold that under the name of "Skidoo"; isn't that right? A. Yes.

Q. It seems to me, Mr. Lewin, you might have given us that information yourself.

A. Didn't you ask me for that information and didn't I give it to you?

Q. I got that memorandum from Mr. Oliver, who got it from the warehouse.

A. I told him to go to the warehouse and get it.

(Testimony of Leon Lewin.)

Q. What would you say those 1100 bags weighed?

A. One hundred and thirty-five pounds a bag.

Q. Didn't you just say that that was ordered out and mixed with the other coffee, that 1100 bags was the total amount of the coffee which was mixed in with the sweepings; isn't that correct?

A. If you will let me explain it, I will. At the Gibraltar warehouse I had a mixture of 1100 bags of coffee, and I had about 14 or 15 or 16 bags of sweepings—I don't remember how many bags it was exactly, but it was the amount they delivered. I take it for granted that the amount was in the neighborhood of 11 which I threw into my coffee, the 1100 bags.

Q. As a matter of fact, these sweepings you put into this very lot? A. Yes.

Q. And it made a large lot of coffee, mixed in with the sweepings, and you sold it under the name of "Skidoo"? A. Yes.

Q. Although you were careful not to sell the other coffee in this market by reason of your fear that it might hurt your business, but you sold some down at the waterfront, didn't you?

Q. Didn't you sell it to the waterfront?

A. No, sir.

Q. You have already testified you sold it at the waterfront.

A. At the same place where the other coffee went to.

Q. Where did it go to? A. To St. Louis.

(Testimony of Leon Lewin.)

Q. Was that all sweepings coffee that went to St. Louis?      A. Only 9 bags.

Q. Where did the sweepings go?

A. In the sacks of the 1100 bags.

Q. I will ask you if you did not so testify, that you sold it down at the waterfront?

A. I wanted to get away as quickly as possible.

Q. All I want to get *is* it to explain that shortage.

A. What do you want me to do? If you will tell me what you want I can explain it.

Mr. DENMAN.—Q. Now, Mr. Lewin, you don't contend, do you, that those sweepings made up all the shortage that there was on the "Santa Rita" cargo, do you?      A. No, sir.

Q. There was still a shortage after that, was there not?

A. Yes. I take it for granted. I could not tell you what, because I didn't weigh the sweepings.

Q. The ship told you or Mr. Oliver told you that these sweepings belonged to the ship and not to you?

A. At the time when I made the purchase I arranged with the insurance company that if I bought at the invoice weight the sweepings I should get. So I went to Mr. Oliver; at first he would not give me no hearing. Well, I says, these sweepings belong to me; I bought the coffee at the original weight and whatever leaked out belongs to me. Well, he said, that was a question, and at first he didn't give me no hearing, and I dropped the matter, and I didn't want

(Testimony of Leon Lewin.)

to go back any more, and after two months I got the sweepings that was sent to the warehouse.

Q. It might have been three or four months, might it not?

A. Might be four or five months; I don't know.

Q. Were these sweepings as good as the coffee you got in the bags?      A. No, sir.

Mr. KNIGHT.—Q. It had dirt in it?

A. They were sweepings from the ship, and they had dirt in.

Q. In pretty poor shape?      A. Yes, sir.

Q. Didn't you testify at page 106 of your testimony:

“Mr. DENMAN.—Q. What became of that coffee?      A. It was delivered to me.

Mr. KNIGHT.—Q. And after that?

A. After that I know I had 1500 pounds; I had it fanned and cleaned; I remember that at one time there was a sailing vessel that wanted some strong coffee, and I sold it one of those commissioner merchants here; I sold it to them; I sold one man 900 pounds, and so on.

Q. You retailed it?

A. Yes. That went out with the sailors, going north, who wanted strong coffee.

Q. They wanted something that would stay by them?      A. Something that will smell.

Mr. DENMAN.—Q. They wanted an oily coffee for an oily voyage?

A. You know they want strong coffee, those fellows that go north.”

(Testimony of Leon Lewin.)

Did you testify that way?           A. Yes, sir.

Q. Is that correct?

A. At the time that I testified I mixed up this one with the "Santa Rita" coffee. My young man who keeps the books says, "No, Mr. Lewin; what we sold there to the sailing vessel was a different lot entirely." That was some bad coffee that we had here, fermented coffee. He told me that that coffee that I testified about selling to the sailing vessel was an entirely different lot of coffee, and after he said it I remembered it. That was some other bad coffee that I had.

Mr. DENMAN.—Q. So that the coffee you sold to the sailing vessel was not "Santa Rita" coffee at all?           A. No, sir.

Q. But the "Santa Rita" coffee which was these sweepings—I mean the "Santa Rita" sweepings coffee was mixed up with the 1100-odd bags of "Skidoo" that you sold last summer?

A. Yes, sir.

Mr. KNIGHT.—Q. How do you know that that sweepings coffee was not sold to ships? How do you know that the testimony you gave was untrue, that that sweepings coffee was not sold to the sailors?

A. I found it out by my man, Mr. Casner, who keeps my books. He drew my attention to that.

Q. He simply told you it was not?

A. My man told me.

Q. The man who is in your employ told you that it was not. That is all you know about it?

(Testimony of Leon Lewin.)

A. I made a mistake.

Q. Why did you testify that way first?

A. I could not keep that in my head. I sold 40,000 bags of coffee, and you cannot keep that in your head for two years.

Q. Who sold that sweepings coffee, yourself or this man?

A. The sweepings coffee went into the mixture and was sold in the same way the whole lot was sold.

Q. Who attended to that?

A. It was done through brokers.

Q. You have not a very clear idea of the whole business, have you?

A. No, I have not. I didn't pay much attention to that thing. I thought the thing was dead long ago.

Mr. DENMAN.—Q. The amount that you paid to the insurance companies would indicate the number of pounds you received at that time, would it not?      A. No.

Q. Well, it is the amount you intended to buy?

A. The amount I agreed to buy, but I would have to take my chances what I am going to get.

Q. You bought it at so much a pound for so many pounds?      A. Yes.

Q. Your check will indicate, according to the amount you agreed to pay for it, how many pounds you received?

A. Yes. I can give you that by telephone. We have got to look up the checks what I give to these

(Testimony of Leon Lewin.)

people. I will telephone to you the checks I gave to each of them.

Mr. KNIGHT.—Q. Here is the way that was: you took the number of bags from the insurance companies' figures? A. Yes, sir.

Q. And you paid them according to their figures?

A. According to their figures.

Q. And if you did not get it—

A. It was my loss.

Q. If you did not get what the insurance companies claimed they sold to you, why, it was your loss. Is that the idea? A. Yes.

Q. What your loss is you don't know?

A. I don't know.

Q. How much the shortage is you don't know?

A. I don't know.

Q. You simply relied on them for the figures?

A. Exactly.

Mr. DENMAN.—Q. You don't know how many pounds you got because you are able to tell that from the amount you sold?

A. Within a hundred pounds I would know.

Q. You know how much coffee you received because you resold all the coffee you received?

A. Yes, sir.

Q. And the amount of coffee you received was the amount you sold? A. Exactly.

Q. Now, the amount that you paid for was the amount you gave a check for to the two companies?

A. Yes, sir.



(Testimony of Leon Lewin.)

Mr. KNIGHT.—Q. You don't know how much of this entered into that Skidoo coffee?

A. No, sir. You can guess that by a few pounds. Supposing you take it for granted and give it every benefit of doubt, it would not amount to more than \$10 difference.

Mr. DENMAN.—Q. What is the outside limit of the sweepings, the outside limit of the weight of the sweepings that you received?

A. If you can tell me the amount of the bags I received I can tell you. Say 100 pounds to the bag.

Mr. OLIVER.—He had 11 bags after it was cleaned.

Mr. DENMAN.—Q. What is the average of one of those bags? A. Say 135 pounds.

Q. That is to say, you received 11 bags weighing about 135 pounds apiece?

A. Yes. I don't remember it. I remember I got some coffee, but I don't remember the amount of it.

Q. What do you suppose that coffee was worth after cleaning?

A. I sold it for  $4\frac{1}{2}$  or  $4\frac{3}{4}$  cents the whole Skidoo mixed.

Q. Was this better than the average or worse than the average?

A. Worse than the average.

Q. Will you turn to the coffee that you got, the Leege & Haskins coffee in this books of yours, and look at those.

A. This is the date (showing).

(Testimony of Leon Lewin.)

Q. You have got 983 bags?

A. That is what I bought on the invoice.

Q. You have got 983 bags marked U. S., and 53 marked D. V., and 23 bags marked S. S.

A. Yes.

Q. That is all that you received?

A. Now listen, those are the coffees that I sold to St. Louis. That is the reason I say I can't remember. You know sometimes when we make a mixture we give it a name like Skidoo; that is a fictitious marking; that is not the original marking. You see I have not got the weight of the other coffee here and I have not got the weights, because we don't know it.

Q. Now, let me ask you: isn't it true as to these 983 marked U. S. and 53 D. V. and 23 S. S., that those were the bags for which you paid?

A. Yes.

Q. And it was on the weights of those bags that you gave your check?      A. Yes.

Q. As shown by the invoices?      A. Yes.

Mr. KNIGHT.—Q. How do you know that, Mr. Lewin?

A. I can only give you the check and the bill which I gave you.

Q. Can you say that you did not give a check for 124 St. L.?      A. No, I couldn't say that.

Q. Nor any of the others; you don't know what you gave a check for and what you did not?

A. I gave a check to the Canton Insurance Company.

(Testimony of Leon Lewin.)

Q. You gave one check?

A. One check for this and one for that.

Q. Did you give two checks, one to the New Zealand and one to the Canton? A. Yes.

Q. You don't know what those checks are, what the amounts are? A. No.

Mr. DENMAN.—Q. This represents, 983, 53 and 53 represents the condition of the coffee as you bought it. You sold it as one lot?

A. No. We had it put in this manner.

Q. This represents the coffee as resacked, does it not?

A. After resacking. That is the way it was entered here. Those marks are fictitious.

Mr. KNIGHT.—Q. Whose marks are they?

A. My young man's marks.

Q. On this column under the heading "sold" you sold the identical quantity that you received, that is, that which you have marked as having been received. I see that on your sold column, you have sold 391 bags opposite your 391 G. C.; 124 bags opposite your 124 St. L.; 983 bags opposite your 983 U. S.; 53 bags opposite your 53 D. V. and 23 bags opposite your 23 S. S. So that apparently according to your books you have sold the exact amount which your books show you received.

A. No; we didn't get no marks from them. That is all fictitious marking. The whole thing was manufactured, I can see that now.

Mr. DENMAN.—Q. The fact is that the entries in your books, 983 U. S., 53 D. V. and 23 S. S. are

(Testimony of Leon Lewin.)

the marks of the "Santa Rita" LEEGE & HASKINS coffee after it was resacked by you?

A. Yes, manufactured by me, made by me.

Q. Those marks were made by you?

A. Yes.

Q. They were the marks that you put on the bags when you resacked that coffee?

A. Yes, sir.

Mr. KNIGHT.—Q. And your books show that you sold the same amount, identically the same amount that your books show you received?

A. What do you mean?

Q. You charge yourself here with having received this quantity of bags set forth in your book and you credit yourself with having sold the same quantity.

A. I manufactured those things.

Q. I don't care about the marks at all. I am speaking of the quantities. A. Yes.

Q. You did not resack all of the coffee?

A. All of them.

Q. Did you resack all of the coffee, including the coffee in which the sacks were goods? A. Yes.

Q. Why did you resack those coffees?

A. To make an average out of it all.

Q. Make an average of it? A. Yes.

Mr. DENMAN.—Q. Make a blend you mean?

A. Yes.

Mr. KNIGHT.—Q. This was all one lot; it was the LEEGE & HASKINS and SCHILLING; it all came out of the same boat; it was all to a certain extent similarly impregnated with those odors, was it not?

(Testimony of Leon Lewin.)

A. Yes, sir.

Q. Why did you want to resack it if it was all similarly impregnated with the odor?

A. The Schilling coffee was much better coffee than the Leege & Haskins, and it was advised by the brokers to mix the whole thing together and resack it. The sacks that were good it was put in them again and the sacks that were not we took new ones.

Q. Then when you resacked this coffee, as far as the old sacks were concerned, those that you could use you used? A. Yes.

Q. And you simply bought a certain quantity of new sacks? A. Yes.

Q. So that, according to the expense which you incurred in getting new sacks, you used 647 old bags and you bought 900 new bags. Now, did you buy smaller new bags than the old ones were?

A. No.

Q. So that you must have had the same quantity after resacking in these bags that you had before, hadn't you?

A. I don't know anything about that, because they might not have been able to get the same quantity in the bags again.

Q. Of course, there might have been a little discrepancy. I mean as far as the size of the bags were concerned they were the same as the original bags?

A. No.

Q. Assuming you used 647 old bags; you simply after you had resacked this coffee put the coffee back.

(Testimony of Leon Lewin.)

as far as these 647 old bags would hold it, into those bags, didn't you?      A. Yes.

Q. You filled those bags as formerly?

A. Yes.

Q. Then you had about 900 new bags. Isn't that so? Assuming now that these figures which you have given us are correct, you must have had about 900 new bags?      A. Yes.

Q. You bought the same size bags as were on the original importation, didn't you?      A. No.

Q. You got a smaller bag?

A. No, a larger bag.

Q. So that your 900 new bags were larger than the old bags?      A. Yes, sir.

Q. And yet with those larger bags you make up a total amount of coffee received and coffee sold of 1574 bags. Is that correct?

A. I take it for granted it is correct, but I would not swear to it.

Q. So that you must have had as much weight in those 1574 bage as you did in the original quantity that you received before you resacked it?

A. I can't understand the whole thing that you have given. Tell me what you want and I will give it to you. I can't understand you, but if you will help me out I will give you whatever you want.

Mr. DENMAN.—Q. As a matter of fact, Mr. Lewin, the accurate thing here is this gross weight?

A. Yes.

Q. The gross weight that you sold of the "Santa

(Testimony of Leon Lewin.)

Rita" coffee, aside from the sweepings was 234,116 less 11,378?

A. That is right. That is all I can tell you.

Q. So that the amount of coffee that you received was 222,742 pounds? A. Yes, sir.

Q. In addition to that you received subsequently 11 bags of sweepings? A. Yes.

Q. And those 11 bags of sweepings would probably average 135 pounds? A. Yes, sir.

Mr. KNIGHT.—Q. Now, Mr. Lewin, take page 140 of your book. It appears there that you sold gross 234,116 pounds, don't it? A. Yes.

Q. On the 21st of February, 1907, to some St. Louis people? A. Yes, sir.

Q. Then take this same book at page 141, and that shows that you sold gross 85,142 pounds; isn't that right? A. Yes, sir, to somebody else.

Q. To somebody else at St. Louis? A. Yes.

Q. Is the lot at page 140 the Leege & Haskins and Schilling shipment?

A. That is the "Santa Rita" excepting the 85 bags.

Q. Except 11,738 pounds gross? A. Yes.

Q. What was the transaction on page 141?

A. That is not the "Santa Rita."

Q. Can you put your hand on the page showing the invoice of the Skidoo coffee?

A. No. You know the Skidoo coffee will be two bags, for instance. I took 54 bags of the Skidoo from this lot and 25 bags of this lot. Here is one

(Testimony of F. B. Oliver.)

mixed, and here is another mixed. This is the arrival marks. I take some of those and throw them together.

Mr. DENMAN.—Q. This is the incoming coffee?

A. Yes. You can't trace up the Skidoo coffee here.

[**Testimony of F. B. Oliver, for the Respondent (Recalled).**]

F. B. OLIVER, recalled.

Mr. KNIGHT.—Q. Mr. Oliver, can you state what was the price then and now of sacks for this coffee?

A. They were very high then; they were worth something between 17 and 18 cents apiece.

Q. I notice by Mr. Lewin's statement which has been put in evidence here dated January 28th, 1909, there was \$162.14 spent for new sacks for this coffee. That at 18 cents apiece would be equal to about 900 sacks?

A. Just about.

Q. That was for the Leege & Haskins and Schilling coffee?

A. Yes.

Q. So that if there was a total of 1547 sacks on both those consignments and he got 900 new sacks, it would leave 647 old sacks or bags that were used?

A. The bulk of these bags were very light. In the first place it should never have been shipped from New York in these bags. The ship should never have taken it. It was marked single bags; they were ordinary 12 ounce bags, and all machine sewed.

Q. What is the ordinary bag?



(Testimony of F. B. Oliver.)

A. The ordinary bags weigh about 2½ pounds apiece, and are 28 by 40, and that is what is called a double twill; that is a very heavy bag.

Q. That is the ordinary coffee bag?

A. Yes; it is a very heavy bag. One coffee man told me here in San Francisco that they ought to have lost every pound of it, on account of shipping it in those light bags; a great many of them were broken; their own weight would break them; to put 135 pounds of coffee in one of those bags is all wrong.

Mr. DENMAN.—Q. Mr. Oliver, did you notice this as soon as the bags came out of the ship, that they were of this quality? A. Yes, I did.

Q. Then the man that took them on board would have noticed this as well?

A. He did notice it. On some of the bills of lading that I have there is a notation that they are single covers.

Mr. KNIGHT.—Q. What ones are you referring to, what bills of lading, of what shipment?

A. The Schilling shipment.

Q. Look at the Leege & Haskins.

A. They are both there.

Mr. DENMAN.—Q. As I understand it, the bill of lading shows that they were shipped in good order and condition, and at the time they recognized the fact when they said it was in good order and condition it was single covers?

A. They did. Here is another. That is made out by another man entirely. That has got in red

(Testimony of F. B. Oliver.)

ink in single bags. To save the ship he should have put in another clause, which he did not.

Q. Which clause?

A. He should have put in there "shipper's risk," which he did not do. That I will admit myself. Now, so far as the sweepings are concerned on the ship, I would like to clear that up. Mr. Lewin came to the Johnson Higgins office, where I was making deliveries of this coffee and receiving the freight, with Mr. Bissell, the outside man for the Hazlitt Warehouse Company, and absolutely demanded of me all the sweepings, and I said, "They do not belong to you." "Why," he said, "Mr. Lewin here has just bought that coffee," and Mr. Lewin spoke up and said, "I want it." I said, "You cannot have it all." I said there were three lots of coffee there and when I got through dealing with this cargo, I would proportion the sweepings and give him what belonged to him. He got all of the sweepings that were coming to him. He said he came there once. He came there again the next day. I am perfectly familiar with those facts. He did get all the sweepings he wanted and he did get all of the proportion that belonged to him. He got his 20 bags, which was his proportion, and Mr. Cambron, who bought the Brandenstein coffee, got 24, as his was in the lower part below all of the other cargo, part of which came out on the Little Mail Dock and the other on the Steuart Street wharf, and his coffee was very much more damaged and the loss was a great deal greater in that coffee than it was in the lot he

(Testimony of F. B. Oliver.)

bought. Now, those are the circumstances connected with that.

(An adjournment was here taken until Friday, March 26th, 1909, at 10:30 A. M.)

Friday, March 26, 1909.

Mr. DENMAN.—I hereby offer in evidence a check dated February 16, 1907, on the London, Paris & American Bank, number 283, payable to the order of the Canton Insurance Office, Limited, for \$7,643.26, and signed by Leon Lewin, which check was received and endorsed by the Canton Insurance Company, and was in payment for the damaged coffee bought by Lewin from the Canton Insurance Office, Limited, the insurers of Leege & Haskins. The rate at which the coffee was bought was  $5\frac{1}{4}\%$  a pound at 2% discount.

And I also offer a check signed by Leon Lewin payable to the New Zealand Insurance Company, the insurers of Schilling, in payment for damaged coffee, in the Steamer "Santa Rita," in the amount of \$3,885.79, the purchase price being  $5\frac{1}{4}\%$  a pound, 2% discount.

Mr. KNIGHT.—To which we will object on the ground that the matter is incompetent, irrelevant and immaterial as to the amount received by the two insurance companies, respectively, from Lewin. I am not objecting on the ground that the insurance officers are not here to testify that they did receive those checks, respectively, from Mr. Lewin. I am not making that objection.

(Testimony of F. B. Oliver.)

Mr. DENMAN.—In answer to the objection, we state that the testimony regarding the checks was brought out by the examination of the respondent, and was a part of his examination.

Mr. KNIGHT.—I call your attention, Mr. Commissioner, to the fact that I happened to be looking over the record this morning and I find that Mr. Lewin has himself testified respecting the amount that he paid, giving the amount \$16,000, and said it is taken from his books, and yet he comes here and tells us that he cannot determine from his books how much he paid for his coffee, and that we will have to rely on the insurance companies to produce the checks to determine what the amount was. Here is the testimony of Mr. Lewin. I happened to run across it this morning: “Q. You paid \$16,495.28 for the coffee? A. Yes. Q. You sold it for how much? A. What, the coffee? Q. Yes. A. I don’t know. I haven’t got that, you know.” There is a discrepancy of about \$5,000. He claims that he had some memorandum before him, and he gives us those exact figures, \$16,495.28.

Mr. DENMAN.—That is what he sold the coffee for.

Mr. KNIGHT.—That is what he paid for it. I want to ask a question or two of Mr. Oliver.

**Testimony of F. B. Oliver, Recalled.**

Mr. KNIGHT.—Q. Do you know what that Cambon coffee sold for? A. Yes.

Mr. DENMAN.—Q. Do you know of your own knowledge? A. Brandenstein told me.

(Testimony of F. B. Oliver.)

Q. Do you know of your own knowledge?

A. No, sir.

Mr. KNIGHT.—Q. How much was it?

A. It was over 8¢.

Mr. DENMAN.—I object to that testimony.

Mr. KNIGHT.—Q. Over 8¢ per pound?

A. Yes.

Q. What coffee was that, the coffee landed at the Little Mail Dock?      A. Yes.

Mr. DENMAN.—Q. Did you see the Cambron coffee when it was sold?

A. Yes, I knew all about it.

Q. Did you see it yourself when it was transferred to the purchaser?

A. No, sir; I didn't see it transferred to the purchaser. I know that coffee brought over 8¢.

Mr. KNIGHT.—Q. Mr. Oliver, there was some coffee of the Brandenstein lot, landed at the Steuart Street Dock also?      A. Yes, sir.

Q. And in what shape was the Steuart Street coffee compared with the coffee that was landed on the Little Mail Dock?

A. It was very much worse. That was very badly damaged. It was mouldy and damp, and the sacks were torn.

Q. Now, how did the Brandenstein coffee landed at the Little Mail Dock compare with the coffee for Leege & Haskins?

A. It was very much poorer. That brought very much less.

(Testimony of F. B. Oliver.)

Mr. KNIGHT.—We have admitted as to the weight of this Leege & Haskins' shipment, as being in accordance with the amount set forth in the libel, have we not? That is my recollection.

Mr. DENMAN.—Yes, that is at page 72.

The WITNESS.—I cannot understand why there is such a discrepancy in those coffees. I never heard of such a thing. I have been in the coffee business myself for a great many years, and I never heard of such a discrepancy. The Brandenstein coffee would all average 135 pounds.

Mr. KNIGHT.—Q. What did the Schilling coffee average? A. One hundred and fifty-four.

Q. What does the Leege & Haskins average?

A. One hundred and forty-three. I know that coffee will vary 5% in my experience one way or the other.

Q. Now, to make the computation exact, there was an arrangement whereby, I believe, the libelant was to pay the additional freight on the additional amount of coffee which it was admitted had been received?

A. We took this as evidence. That was the weight.

Mr. KNIGHT.—That total amount of freight according to statement?

Mr. DENMAN.—Fifty-six dollars and twenty-two cents.

Mr. KNIGHT.—Fifty-six dollars and fifty-seven cents, I have it. That is according to page 83.

(Testimony of F. B. Oliver.)

Mr. DENMAN.—That is adding the tolls, but the State tolls were not added.

Q. Now, Mr. Oliver, I find here a complaint that you did not believe you were fairly treated because you had no opportunity to examine the coffee on the Little Mail Dock. A. Yes.

Q. Now, is that really fair, didn't you have a chance to examine it?

A. I did not. I did have a chance to examine it, but I have no right to go and examine other people's coffee.

Q. You did not examine it then?

A. They came and paid their freight and took their delivery order and that coffee belonged to them. I have no right to go down and examine any person's coffee. I did look at the coffee as it came out of the shed. I took up a handful here and there as it came out, as it was strewn along the wharf from the poor bags where they were torn, but to take samples of the coffee I did not. I calculated that the owners of the coffee would make a claim and thereby we could determine the weights, but I don't know what the weights are.

Mr. DENMAN.—In view of this additional testimony regarding the Cambron coffee, which is entirely new to me, this matter will have to be continued.

Q. You say you don't know what the Cambron coffee was sold for of your own knowledge?

A. Except what he told me. He told me he got over 8c for the Brandenstein coffee from the Little Mail Dock. That I know was not damaged, that is

(Testimony of F. B. Oliver.)

to say, by moisture, or anything of that kind, that was damaged by the odor of the oil, the fumes.

Q. He paid what for that?

A. Six and a quarter or six and a half. I have forgotten. It is in the book there.

Q. And you negotiated that sale?

A. Yes, sir.

Mr. KNIGHT.—Q. Did that include the Stewart Street coffee?

A. Yes, the whole of it brought either  $6\frac{1}{4}$  or  $6\frac{1}{2}$ . I have forgotten; it is there in the book. Of course, less 2%. That is the custom of the trade, 2% in 90 days.

Mr. DENMAN.—Q. Purchased it for 6c less 2% discount? A. Yes.

Q. What was that coffee that you sold for 6c less 2% discount? A. The Brandenstein coffee.

Q. I thought you told us the other coffee was sold at 2%?

A. The Brandenstein coffee. I had nothing to do with the Leege & Haskins.

Q. That was sold in about ten months?

A. No, that was sold in August or September.

Q. That would be?

A. February, March, April, May, June, July, August, September—eight months.

Q. What were the warehouse charges for keeping it?

A. I don't know anything about it. - I had nothing to do with that.



(Testimony of F. B. Oliver.)

Q. The warehouse charges amount to considerable?

A. That, I say, I had nothing to do with. I settled with Brandenstein.

Q. They had to pay the warehouse charges?

A. I presume they did.

Q. There was interest on the coffee as it lay idle?

A. Yes.

Q. And fire insurance on it during all that period?

A. I presume so, I couldn't tell you. I had nothing to do with that.

Q. Of course, there is a gambling chance as to whether the coffee would improve rapidly or not rapidly?

A. No gambling chance at all.

Q. The rapidity with which it gives off certain oils will vary?

A. Yes.

Q. There would be a gambling chance in February as to what the stuff would be worth in September, you wouldn't know whether it would gain or lose?

A. I should say that I know it would lose.

Q. There would be a gamble between February and September as to whether the coffee would gain or lose?

A. Not any more than there would be in any goods stored in a warehouse. You don't know what they are coming in contact with.

Q. With respect to the 5 $\frac{1}{4}$ c in February and the 6c in September you would have to take into consideration all of those matters?

(Testimony of F. B. Oliver.)

A. Yes, and a poor market, too. There was a very poor market in August.

Q. Are you now referring to the market for good coffees or the market for Skiddoo.

A. Good coffees.

Q. How about the market for Skiddoo between those two periods—rotten coffees?

A. There were no rotten coffees. Rotten coffees are not used. These were not rotten coffees. There is not anything in that.

Mr. DENMAN.—If it is conceded that the testimony as to the sale of the Cambron coffee is pure hearsay, and not relevant to the case, why, we will go on this morning. If it is to be regarded for what it is worth, we will request a continuance.

Mr. KNIGHT.—Mr. Oliver says he got his figures from Cambron.

Mr. DENMAN.—If it is to be considered as admitted as testimony, I desire to produce counter-testimony.

Mr. KNIGHT.—We will treat it as pure hearsay, then, because we want to conclude this matter some time.

(Counsel thereupon proceeded with their arguments.)

[Endorsed]: Presented and filed in open court, June 3, 1909. Jas. B. Brown, Clerk. By Francis Krull, Deputy Clerk.

[**Libelants' Exceptions to the Findings and the Report of the United States Commissioner.**]

*In the District Court of the United States for the Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWABACHER, Partners Doing Business Under the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," etc., and  
All Persons Claiming any Interest Therein,  
Respondents.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States, in and for the Northern District of California:

Now comes the *libelant* and excepts to the findings and report of the Commissioner herein as follows:

I.

Excepts to the finding that the 152,764 pounds of coffee described in the libel and injured on the said voyage was valued at 10½ cents in sound condition at the port of San Francisco, on January 30, 1907, the time of arrival.

II.

Excepts to the Report in that it fails to find that the sound value of the said 152,764 pounds of coffee at the said time and place was eleven cents per pound.

III.

Wherefore, the libelant prays that the Court will find the said value to be eleven cents per pound, and that \$763.82 be added to the damages found in said report, together with interest thereon from January 30, 1907.

WILLIAM DENMAN,  
Proctor for Libelants.

[Endorsed]: Filed Jun. 3, 1909. Jas. P. Brown,  
Clerk. By Francis Krull, Deputy Clerk.

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[**Claimant's Exceptions to the United States Commissioner's Report.**]

*In the District Court of the United States for the  
Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWABACHER, Partners Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," etc., Her  
Tackle, Apparel and Furniture, and All Persons  
Intervening for Their Interests Therein,  
Respondents.

EXCEPTIONS TO COMMISSIONER'S REPORT.

Claimant herein *hereby* to the report of the Commissioner heretofore made and filed herein, for the following causes, that is to say:

1. Because the said Commissioner finds that the value of the coffee in question, upon its arrival at the port of San Francisco, was only five and one-quarter ( $5\frac{1}{4}$ ) cents a pound and that said coffee was not worth at least six (6) cents a pound, reducing the amount of damages found by the Commissioner herein, by eleven hundred and forty-five and  $\frac{73}{100}$  (1145.73).

2. Because said Commissioner has allowed libelant interest from the 30th day of January, 1907, to the date of filing said report, to wit, May 28, 1909, at the rate of six (6) per cent per annum, on a sum equivalent to the difference between ten and one-half ( $10\frac{1}{2}$ ) cents a pound, as the sound value of the coffee, and five and one-quarter ( $5\frac{1}{4}$ ) cents a pound, which is found by said Commissioner to have been its value upon its arrival at said port of San Francisco, on one hundred and fifty-two thousand seven hundred and sixty-four (152,764) pounds, instead of allowing interest on a sum equivalent to the difference between said ten and one-half ( $10\frac{1}{2}$ ) cents a pound and a sum not less than six (6) cents a pound, upon a like quantity, thereby further reducing the amount of damages herein by the sum of one hundred and fifty-four and  $\frac{67}{100}$  (154.67) dollars at least.

Dated June 12, 1909.

PAGE, McCUTCHEN & KNIGHT,  
Proctors for Claimant.

Service of the within exceptions to Commissioner's Report and receipt of a copy is hereby admitted this 12th day of June, 1909.

WILLIAM DENMAN,  
Per WM. B. ACTON,  
Proctor for Libelants.

[Endorsed]: Filed Jun. 12, 1909. Jas. P. Brown,  
Clerk. By Francis Krull, Deputy Clerk.

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**[Order Confirming the Report of the United States  
Commissioner and Overruling the Exceptions  
Taken Thereto.]**

*In the District Court of the United States, for the  
Northern District of California.*

THOMAS H. HASKINS et al.

vs.

Steamship "SANTA RITA," etc.

DE HAVEN, District Judge.—The report of the United States Commissioner, filed herein June 3, 1909, is confirmed, and the exceptions, both of the libelant and the claimant, are overruled.

[Endorsed]: Filed Aug. 6, 1909. Jas. P. Brown,  
Clerk. By Francis Krull, Deputy Clerk.

*In the District Court of the United States for the  
Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners, Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

American Steamer "SANTA RITA," Her Tackle,  
Apparel and Furniture, and All Persons In-  
tervening for Their Interests Therein,  
Respondents.

### **Final Decree.**

Issue having been joined herein and this cause coming on duly to be heard, the libelants being represented by their proctor, William Denman, Esq., and the claimant United Steamship Company, by its proctors, Charles Page, Esq., and Samuel Knight, Esq., and it being admitted at the hearing that the allegations of the libel as to the ownership of the cargo, its receipt by the vessel in good condition and its delivery in a somewhat damaged condition were true; and it being agreed that the question of the amount of the said damage, in the event that the steamer "Santa Rita," be held liable for the damage, should be referred to a commissioner; and evidence being introduced as to the liability of the vessel for the said damage; and the court finding that the said damage was not caused by leakage, breakage, contact

with other goods and perils of the sea, or any of them, as alleged in the answer or at all;

And the said matter being thereafter referred herein to Commissioner Francis Krull, to determine, ascertain and report the amount of said damages, and the said Francis Krull having ascertained and reported said damages as amounting to Nine Thousand and Seventy-five and  $78/100$  Dollars (\$9,075.78) as of the date of the said report, to wit, the 28th day of May, 1909; and exceptions to the said report having been heard and overruled and the said report by this Court ordered confirmed;

Now, therefore, it is ordered, adjudged and decreed, that the said libelants, Thomas H. Haskins and Max Schwabacher, partners doing business under the firm name of Leege & Haskins, do have and recover for the causes in the said libel mentioned, the sum of Nine Thousand and Seventy-five and  $78/100$  Dollars (\$9,075.78), the amount reported to be due them by said commissioner, together with interest thereon at the rate of seven per cent per annum from the said 28th day of May, 1909, the said date of the commissioner's report, in the sum of \$139.20 amounting in all to the sum of \$9,214.20, together with their costs to be taxed.

And it is further ordered, adjudged and decreed, that unless an appeal be taken from this decree within ten days after notice of this decree to Messrs. Page, McCutchen & Knight, proctors for the claimant herein and a supersedeas bond staying execution be filed as required by law, the United Steamship Company and the United States Fidelity and Guaranty



*vs. Thomas H. Haskins and Max Schwabacher.* 201  
Company, the stipulator for the value on the part of  
the claimant of the said Steamship "Santa Rita,"  
cause the engagements of the said stipulation to be  
performed or show cause within four days after the  
expiration of said time to appeal, or on the first day  
of jurisdiction thereafter why execution should not  
issue against their goods, chattels and lands for the  
amount of this decree, with interest at said rate  
thereon according to their said stipulation.

Dated August 16th, 1909.

JOHN J. DE HAVEN,  
Judge.

Entered in Vol. 4 Judg. and Decrees at page 309.

[Endorsed]: Filed Aug. 16, 1909. Jas. P. Brown,  
Clerk. By Francis Krull, Deputy Clerk.

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*In the District Court of the United States for the  
Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

American Steamer "SANTA RITA," Her Tackle,  
Apparel and Furniture, and All Persons  
Intervening for Their Interests Therein,

Respondents,

UNITED STEAMSHIP COMPANY, a Corpora-  
tion,

Claimant.

**Notice of Appeal.**

To Libelants Above Named, and to William Denman, Esq., Their Proctor:

You and each of you will please take notice that the above-named claimant herein, United Steamship Company, hereby appeals, to the next United States Circuit Court of Appeals for the Ninth Circuit, to be holden in and for said Circuit at the City and County of San Francisco, from so much of the Final Decree, made and entered herein on the 16th day of August, 1909, as adjudges and Decrees that said libelants, do have and recover from the claimant the full amount of Nine Thousand and Seventy-five and  $78/100$  (9,075.78) Dollars, or any sum in excess of the sum of Seven Thousand Nine Hundred and Thirty and  $5/100$  (7,930.05) Dollars, together with interest thereon and costs as provided in said decree. And in and by said Appeal the above-named claimant hereby gives notice that it desires only to review the question involved in said cause as to the value, at the time of its delivery to the above-named libelants, of the coffee claimed herein to have been damaged.

Dated, San Francisco, California, September 25, 1909.

Yours etc.,

PAGE, McCUTCHEN & KNIGHT,  
Proctors for Claimant and Appellant.

*vs. Thomas H. Haskins and Max Schwabacher.* 203

Receipt of a copy of the within Notice of Appeal is hereby admitted this 27th day of September, 1909.

WILLIAM DENMAN,  
By WM. B. ACTON,  
Proctor for Libelant.

[Endorsed]: Filed, Sep. 28, 1909. Jas. P. Brown,  
Clerk. By M. Thomas Scott, Deputy Clerk.

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*In the District Court of the United States for the  
Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

American Steamer "SANTA RITA," Her Tackle,  
Apparel and Furniture, and All Persons  
Intervening for Their Interests Therein,  
Respondents,

UNITED STEAMSHIP COMPANY, a Corpora-  
tion,

Claimant.

**Citation [Copy].**

United States of America,—ss.

The President of the United States to Thomas H. Haskins, and Max Schwabacher, Partners Doing Business Under the Firm Name of Leege & Haskins, Libelants, Against the said Steamship "Santa Rita," Her Tackle, Apparel and Furniture, and Against All Persons Intervening for Their Interests Therein:

Whereas, the above-named claimant has lately appealed to the United States Circuit Court of Appeals, for the Ninth Circuit, from a portion of the Decree recently rendered by the District Court of the United States for the Northern District of California, awarding said Thomas H. Haskins, and Max Schwabacher, partners doing business under the firm name of Leege & Haskins, the sum of Nine Thousand and Seventy-five and  $78/100$  (9,075.78) Dollars, together with interest and costs, and from so much of said Decree as awards said Libelants, any sum in excess of Seven Thousand Nine Hundred and Thirty and  $5/100$  (7,930.05) Dollars, together with interest and costs:

Now, therefore, you are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden in the City and County of San Francisco, State of California, on the 31st day of October, 1909, to show cause, if any there be, why said Decree rendered against said appellant should not be corrected, and

to do and receive may appertain to justice to be done in the premises.

Witness, the Honorable E. S. FARRINGTON, sitting for the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California, this 1st day of October, 1909.

E. S. FARRINGTON,  
District Judge.

Receipt of a copy of the within Citation is hereby admitted this 1st day of October, 1909.

WILLIAM DENMAN,  
By WM. B. ACTON,  
Proctor for Libelant.

[Endorsed]: Filed Oct. 1, 1909. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

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*In the District Court of the United States in and for  
the Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWABACHER, Partners Doing Business Under the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," Her Tackle, Apparel and Furniture and All Persons Intervening for Their Interests Therein,  
Respondents.

**Assignment of Errors.**

Claimant herein hereby assigns errors in the proceedings of the District Court in the above case, as follows:

1. The District Court erred in confirming the Report of the Commissioner to whom said cause was referred to ascertain and report the amount of damages sustained by the merchandise involved herein, to wit, coffee, and in thereby holding and deciding that the value of said coffee upon its arrival at the port of San Francisco was only  $5\frac{1}{4}$  cents a pound, and that said coffee was not worth, at said time and place, at least 6 cents a pound, which difference amounts at least to \$1,145.73.

2. The District Court erred in confirming the said Report of said Commissioner and in thereby holding and deciding that libelants were entitled to receive interest on the difference between  $10\frac{1}{2}$  cents a pound, as the sound value of said coffee, at the time of its arrival at said port of San Francisco, and  $5\frac{1}{4}$  cents a pound, which is found by said commissioner as aforesaid to have been its value at said time and place, on 152,724 pounds, instead of allowing interest on the difference between said  $10\frac{1}{2}$  cents a pound and a sum not less than 6 cents a pound, upon a like quantity of coffee, which difference in interests amounts to at least \$154.67.

3. The District Court erred in not overruling said report of said commissioner to the extent of \$1,300.40, at least, and in not reducing the amount

*vs. Thomas H. Haskins and Max Schwabacher.* 207  
of damages so found by him, by the said sum of  
\$1,300.40, at least.

Dated San Francisco, California, January 27,  
1910.

PAGE, McCUTCHEN & KNIGHT,

Proctors for Claimant.

Service of the within Assignment of Errors, and  
receipt of a copy is hereby admitted this 27th day  
of January, 1910.

WILLIAM DENMAN,

Proctor for Libellant.

[Endorsed]: Filed Jan. 27, 1910. Jas. P. Brown,  
Clerk. By M. T. Scott, Deputy Clerk.

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[**Stipulation for Transmission of Original Exhibits  
to United States Circuit Court of Appeals.**]

*In the District Court of the United States for the  
Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libellants,

vs.

The American Steamer "SANTA RITA" Her  
Tackle, Apparel and Furniture and All Per-  
sons Intervening for Their Interests Therein,  
Respondents,

UNITED STEAMSHIP COMPANY (a Corpora-  
tion),

Claimant.

It is hereby stipulated and agreed by and between the respective parties hereto that all the original exhibits in the above-entitled cause, used upon the reference before the United States Commissioner on the question of damages, may be transmitted by the clerk of the United States District Court to the clerk of the United States Circuit Court of Appeals with the apostles on appeal in said cause.

Dated February 4, 1910.

WILLIAM DENMAN,

Proctor for Libellant.

PAGE, McCUTCHEN & KNIGHT,

Proctors for Claimant.

[Endorsed]: Filed Feb. 4, 1910. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk.

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*In the District Court of the United States for the Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWABACHER, Partners Doing Business Under the Firm Name of LEEGE & HASKINS.

Libelants,

vs.

The American Steamer "SANTA RITA," Her Tackle, Apparel and Furniture and All Persons Intervening for Their Interests Therein,

Respondents,

UNITED STEAMSHIP COMPANY (a Corporation),

Claimant.



**Stipulation and Order Extending Time to File  
Apostles on Appeal [to November 27, 1909].**

It is hereby stipulated and agreed, by and between the respective parties hereto, that United Steamship Company, claimant and appellant herein, may have and it is hereby granted to and including the 27th day of November, 1909, within which to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, the Apostles on Appeal, in the above-entitled cause, certified by the Clerk of the United States District Court, Northern District of California.

Dated October 27, 1909.

WILLIAM DENMAN,

Proctor for Libelant and Appellee.

PAGE, McCUTCHEN & KNIGHT,

Proctors for Claimant and Appellant.

So ordered.

JOHN J. DE HAVEN,

Judge.

Oct. 27, 1909.

The foregoing stipulation having been entered into, and good cause appearing therefor, it is hereby ordered that the United Steamship Company, claimant and appellant herein, may have and it is hereby granted to and including the 27th day of November, 1909, within which to procure to be filed, in the United States Circuit Court of Appeals for the Ninth Circuit, the Apostles on Appeal, in the above-entitled cause.

Certified by the clerk of the United States District Court, for the Northern District of California.

Dated October 27th, 1909.

\_\_\_\_\_,  
Judge.

[Endorsed]: Filed Oct. 27, 1909. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

\_\_\_\_\_  
*In the District Court of the United States for the Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWABACHER, Partners Doing Business Under the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," Her Tackle, Apparel and Furniture and All Persons Intervening for Their Interests Therein,  
Respondents,

UNITED STEAMSHIP COMPANY (a Corporation),

Claimant.

**Order Extending Time to File Apostles to [December 27, 1909].**

Good cause appearing therefor, it is hereby ordered that United Steamship Company, a corporation, owner of the American steamship "Santa Rita,"

*vs. Thomas H. Haskins and Max Schwabacher.* 211  
claimant and appellant herein may have and it is  
hereby granted thirty (30) days from and after  
November 27th, 1909, within which to procure to  
be filed in the United States Circuit Court of Ap-  
peals for the Ninth Circuit, the Apostles on Appeal  
certified by the clerk of the United States District  
Court, for the Northern District of California (in-  
cluding Assignment of Errors), in the above-entitled  
cause.

Dated November 26th, 1909.

JOHN J. DE HAVEN,  
Judge.

[Endorsed]: Filed Nov. 26, 1909. Jas. P. Brown,  
Clerk. By M. T. Scott, Deputy Clerk.

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*In the District Court of the United States for the  
Northern District of California.*

IN ADMIRALTY.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libelants,

vs.

The American Steamer "SANTA RITA," Her  
Tackle, Apparel and Furniture and All Per-  
sons Intervening for Their Interests Therein,  
Respondents,

UNITED STEAMSHIP COMPANY (a Corpora-  
tion),

Claimant.

**Order Extending Time to File Apostles [to January  
26, 1910].**

Good cause appearing therefor, it is hereby ordered that United Steamship Company, a corporation, owner of the American steamship "Santa Rita," claimant and appellant herein, may have and it is hereby granted thirty (30) days, from and after December 27th, 1909, within which to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, the Apostles on Appeal certified by the clerk of the United States District Court, for the Northern District of California (including Assignments of Error), in the above-entitled cause.

Dated December 24th, 1909.

JOHN J. DE HAVEN,  
Judge.

[Endorsed]: Filed Dec. 24, 1909. Jas. P. Brown,  
Clerk. By M. T. Scott, Deputy Clerk.

*In the District Court of the United States for the  
Northern District of California.*

IN ADMIRALTY—No. 13,639.

THOMAS H. HASKINS and MAX SCHWA-  
BACHER, Partners Doing Business Under  
the Firm Name of LEEGE & HASKINS,  
Libellants,

vs.

The American Steamship "SANTA RITA," Her  
Tackle, Apparel and Furniture and All Per-  
sons Intervening for Their Interests Therein,  
Respondent,

UNITED STEAMSHIP COMPANY (a Corpora-  
tion),

Claimant.

**Stipulation and Order Extending Time to File  
Apostles [to February 5, 1910].**

It is hereby stipulated and agreed by and between the respective parties hereto that United Steamship Company, a corporation, owner of the American steamship "Santa Rita," claimant and appellant herein, may have, and it is hereby granted, to and including the 5th day of February, 1910, within which to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit the apostles (including the assignments of error), in the above-entitled cause, certified by the clerk of the

United States District Court for the District of California.

Dated January 26th, 1910.

WILLIAM DENMAN,

Proctor for Libellant and Appellees.

PAGE, McCUTCHEN & KNIGHT,

Proctors for Claimant and Appellant.

The foregoing stipulation having been entered into, and good cause appearing therefor, it is hereby ordered that United Steamship Company, a corporation, owner of the American steamship "Santa Rita," claimant and appellant herein, may have, and it is hereby granted, to and including the 5th day of February, 1910, within which to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit the apostles on appeal (including assignments of error), in the above-entitled cause, certified by the clerk of the United States District Court, for the Northern District of California.

Dated January 27th, 1910.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jan. 27, 1910. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

**Certificate of Clerk United States District Court to  
Apostles.**

United States of America,  
Northern District of California,—ss.

I, Jas. P. Brown, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify that the foregoing and hereunto annexed one hundred and ninety-one pages, numbered from 1 to —, inclusive, with the accompanying Exhibits, four in number, contain a full and true transcript of the records in the said District Court, made up pursuant to instructions, "Stipulation as to what Apostles shall contain" (embodied in the transcript), of Messrs. Page, McCutchen and Knight, proctors for claimant and appellant, in the case entitled Thomas H. Haskins and Max Schwabacher, etc., vs. The American steamer "Santa Rita," etc., No. 13,639.

I further certify that the cost of preparing and certifying to the foregoing Transcript of Appeal is the sum of One Hundred Dollars and Twenty Cents, and that the same has been paid to me by proctors for claimant and appellants.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 5th day of February, A. D. 1910, and of the Independence of the United States the one hundred and thirty-fourth.

[Seal]

JAS. P. BROWN,  
Clerk.

[Endorsed]: No. 1821. United States Circuit Court of Appeals for the Ninth Circuit. The United Steamship Company (a Corporation), Claimant of the American Steamer "Santa Rita," Her Tackle, Apparel and Furniture, and All Persons Intervening for Their Interests Therein, Appellants, vs. Thomas H. Haskins and Max Schwabacher, Partners Doing Business Under the Firm Name of Leege & Haskins, Libelants, Appellees. Apostles. Upon Appeal from the United States District Court for the Northern District of California.

Filed February 5, 1910.

F. D. MONCKTON,  
Clerk.

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**Certificate of Clerk United States District Court to Exhibits.**

United States of America,  
Northern District of California,—ss.

I, Jas. P. Brown, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify, that the accompanying exhibits (transmitted under separate covers), Libelant's Exhibit No. 1 (small bag of coffee), and Libelant's Exhibit No. 2 (small jar of coffee); and the exhibits attached hereto, Libelant's Exhibit No. 3 (Memorandum, marked Lewin), and Claimant's Exhibit No. 1 (Schilling's letter to the owners of the steamship "Santa Rita"), are the original exhibits, introduced and filed by United States Commissioner Francis Krull, at the hearings



*vs. Thomas H. Haskins and Max Schwabacher.* 217

before him, in the case of Thomas H. Haskins, and Max Schwabacher, etc., vs. The American Steamer "Santa Rita," Her Tackle, Apparel, etc., No. 13,639, and are herewith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as per stipulation, filed in this court and embodied in the transcript of Appeal, herewith.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 5th day of February, A. D. 1910.

[Seal]

JAS. P. BROWN,

Clerk.

**[Libelants' Exhibit No. 3.]**

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1528 " short

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152,764

Fr<sup>t</sup> 558, 29 16495.28

Ex 70.00

*pluss* [?] 10%

[Endorsed]: No. 13,639. Haskins et al. vs. "Santa Rita." Lib. Ex. No. 3. Francis Krull, United States Commissioner, North'n Dist. of California.

No. 1821. U. S. Circuit Court of Appeals for the Ninth Circuit. Libelant's Exhibit No. 3. Received Feb. 5, 1910. F. D. Monckton, Clerk.

[**Claimant's Exhibit No. 1.**]

[Letterhead of A. Schilling & Company.]

13 February, 1907.

Recd 2/14/07

Steamship "Santa Rita"

Union Oil Co., owners

16th & Illinois Sts.

S. F.

Gentlemen

The S S "Santa Rita" brought for our account 500 bags of coffee which were delivered in unmerchantable condition.

As the damage has occurred while the goods were in your possession, and evidently through your fault or neglect, we beg to advise that you will be held liable for the damage sustained.

Your truly,

A. SCHILLING & COMPANY,

GEO. A. VOLKMAN,

Vice-President.

[Address on Envelope of A. Schilling & Company.]

Union Oil Co.

33021

16th & Illinois Sts

S F

Special Delivery

[Endorsed]: No. 13,639. Dec. 30, 1908. Clmt's Ex. No. 1. Francis Krull, U. S. Commr.

No. 1821. U. S. Circuit Court of Appeals for the Ninth Circuit. Claimant's Exhibit No. 1. Received Feb. 5, 1910. F. D. Monekton, Clerk.